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BEFORE THE ARIZONA CORPORATION COMMISSIONCOMMISSIONERS

Arizona Corporation Commission

DOCKETED

DEC 17 2019

DOCKETED BY

DOCKET NO. S-21035A-17-0391

DECISION NO. 77502

IN THE MATTER OF:

PACIFIC CAPITAL ENTERPRISES LLC, a
Delaware limited liability company,SUPERIOR DIAMOND MANAGEMENT LLC, A
Delaware limited liability company,MICHAEL BARRY ECKERMAN and TONYA
ECKERMAN, husband and wife,VENESSA R. SANDOVAL and ASHLEY ABBEMA,
husband and wife,¹

Respondents.

OPINION AND ORDER

DATES OF PRE-HEARING CONFERENCES: March 15 and 27, 2018, and September 6, 2018

DATES OF HEARING: January 28, 29, and 30, 2019

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Mark Preny

APPEARANCES: Mr. Michael J. LaVelle and Mr. Matthew K.
LaVelle, LaVelle & LaVelle, PLC, on behalf of
Respondents Pacific Capital Enterprises LLC,
Superior Diamond Management LLC, Michael
Barry Eckerman and Tonya Eckerman, Venessa
R. Sandoval and Ashley Abbema; andMr. Christopher Nichols and Mr. Paul Kitchin,
Staff Attorneys, Securities Division of the
Arizona Corporation Commission.

¹ Respondents Pacific Capital Enterprises, LLC, Superior Diamond Management, LLC, Michael Barry Eckerman, and Tonya Eckerman waived their rights to a hearing and consented to the Commission's Order in Decision No. 77117, filed March 13, 2019.

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1 **BY THE COMMISSION:**

2 On December 29, 2017, the Securities Division ("Division") of the Arizona Corporation
3 Commission ("Commission") filed a Temporary Order to Cease and Desist and Notice of Opportunity
4 for Hearing ("Notice") against Pacific Capital Enterprises LLC ("Pacific"), Superior Diamond
5 Management LLC ("Diamond"), Michael Barry Eckerman and Tonya Eckerman (the "Eckermans"),
6 and Venessa R. Sandoval and John Doe Sandoval (the "Sandovals"), (collectively "Respondents") in
7 which the Division alleged violations of the Arizona Securities Act ("Securities Act").

8 The Respondents were duly served with copies of the Notice.

9 On February 20, 2018, the Respondents filed a Request for Hearing pursuant to A.R.S. § 44-
10 1972 and Arizona Administrative Code ("A.A.C.") R14-4-307.

11 On February 21, 2018, by Procedural Order, a pre-hearing conference was set for March 15,
12 2018.

13 On February 23, 2018, the Respondents filed a Motion for Discovery Orders. The Respondents
14 requested that the Division be required to provide: witness lists; exhibits; a summary of the expected
15 testimony of each witness; records and property seized pursuant to an Attorney General's search
16 warrant in December 2016; and all exculpatory information in the Division's possession. The
17 Respondents contended that "[a]s long as the State has restricted access to the Respondents' own
18 information or holds undisclosed information that could help Respondents, it is impossible to conduct
19 a hearing in this matter in accordance with the constitutional right of due process."

20 Also on February 23, 2018, the Respondents filed an Answer to Temporary Order to Cease and
21 Desist.

22 On February 27, 2018, counsel for the Respondents filed a Consent to Email Service.

23 On March 5, 2018, by Procedural Order, the Respondents' Consent to Email Service was
24 approved.

25 On March 9, 2018, the Division filed a Response to Respondents' Motion for Discovery Orders.
26 The Division contended that the Respondents did not have a reasonable need for: all exculpatory
27 information; search warrant documents from the offices of Premier Asset Management Group, LLC;
28

1 statements and investigative reports; and brief witness testimony summaries. The Division stated that
2 it supported an order for the exchange of exhibits and witness lists.

3 On March 15, 2018, a Pre-Hearing Conference was held as scheduled. The Respondents and
4 the Division appeared through counsel. The scheduling of a hearing was discussed. The Respondents
5 requested an extension until March 19, 2018, to file a reply regarding their Motion for Discovery
6 Orders. The Division did not object to an extension to March 19, 2018, and the Administrative Law
7 Judge granted the extension. The Respondents further requested a date for oral argument on the Motion
8 for Discovery Orders.

9 Also on March 15, 2018, by Procedural Order, a hearing was set in this matter to commence on
10 September 17, 2018. Oral argument on the Motion for Discovery Orders was scheduled for March 27,
11 2018.

12 On March 19, 2018, the Respondents filed a Reply in Support of the Motion for Discovery
13 Orders. The Respondents contended that due process required they receive exculpatory evidence,
14 within the meaning of *Brady v. Maryland*, 373 U.S. 83 (1963), and the documents that were taken by
15 the State of Arizona.

16 On March 27, 2018, the oral argument on the Motion for Discovery Orders was held as
17 scheduled. The Division and the Respondents appeared through counsel. The parties presented
18 argument on the Respondents' Motion for Discovery Orders. The Administrative Law Judge denied
19 the Respondents' Motion for Discovery Orders. Citing *Foor v. Smith*, No. 1 CA-CV 17-0143, 2018
20 WL 1163014, at *4 (Ariz. App. Mar. 6, 2018), the Administrative Law Judge found that *Brady* did not
21 apply as the Division is not seeking relief unique to its police power and the Respondents have adequate
22 discovery and disclosure procedures available. The Administrative Law Judge further found that the
23 Respondents failed to establish a reasonable need, pursuant to A.R.S. 41-1062(A)(4), for the requested
24 search warrant documents.

25 On March 28, 2018, by Procedural Order, Respondents' Motion for Discovery Orders was
26 denied.

27 On April 6, 2018, the Respondents filed a Notice of Filing Affidavit of Custodian Records. The
28 Respondents provided notice of their response to a subpoena by the Division.

1 On June 19, 2018, the Respondents filed a List of Witnesses and Exhibits.

2 On June 26, 2018, the Respondents filed a Notice of Additional Witnesses.

3 On August 2, 2018, the Respondents filed Respondents' Motion to Prohibit Expert Testimony
4 by the Securities Division or to Continue the Trial. The Respondents contended that the Division gave
5 notice of a Real Estate Valuation Expert who was to present a profitability study, but the Division had
6 not identified this expert or provided the expert's opinion. The Respondents argued they would need
7 time to obtain their own expert(s). The Respondents requested that the Division be barred from using
8 any undisclosed experts or, in the alternative, that the hearing be continued at least 90 calendar days
9 from the date of disclosure of the full opinion of each Division expert.

10 On August 16, 2018, the Division filed its Response to Respondents' Motion to Prohibit Expert
11 Testimony by the Securities Division or to Continue the Trial. The Division stated it did not oppose a
12 continuance of the hearing to allow time to address expert witness issues. The Division further
13 proposed a procedural conference to discuss a new hearing schedule.

14 Also on August 16, 2018, by Procedural Order, a procedural conference was set for September
15 6, 2018.

16 Also on August 16, 2018, the Respondents filed a Request to Appear Telephonically, stating
17 that counsel for the Respondents would be out of town on September 6, 2018, and the Securities
18 Division did not object to his appearing telephonically.

19 On August 20, 2018, by Procedural Order, the Respondents' Request to Appear Telephonically
20 was granted.

21 On September 6, 2018, the procedural conference was held as scheduled. The Division and the
22 Respondents appeared through counsel. The parties discussed the status of disclosure made by the
23 Division regarding its intended expert witness, and dates for a rescheduled hearing.

24 Also on September 6, 2018, by Procedural Order, the hearing was rescheduled to commence
25 on January 28, 2019.

26 On September 14, 2018, the Division filed an Unopposed Motion to Amend Caption and for
27 Leave to Amend Temporary Order to Cease and Desist and Notice of Opportunity ("Motion to
28 Amend"). The Division requested to amend the caption and Notice to correctly identify Respondent

1 Venessa R. Sandoval's spouse, Ashley Abbema. The Division further sought to amend the Notice to
2 allege that Michael Barry Eckerman omitted a temporary securities order against him and, along with
3 Pacific, misrepresented that Pacific was profitable. The Division also sought to update several other
4 factual allegations, including the number of investors and total amount invested. The Division asserted
5 that the Respondents had represented through counsel that they did not oppose the Motion to Amend.

6 On September 19, 2018, by Procedural Order, the Division's Motion to Amend was granted.

7 Also on September 19, 2018, the Division filed an Amended Notice of Opportunity for Hearing
8 ("Amended Notice").

9 On September 27, 2018, the Respondents filed a Request for Hearing with respect to the
10 Amended Notice.

11 On October 4, 2018, the Respondents filed a Motion to Require Disclosure of Opinions, Report,
12 and to Allow Deposition and Request for Hearing on the Motion ("Motion to Disclose").

13 On October 15, 2018, the Respondents filed an Answer to the Amended Notice ("Amended
14 Answer").

15 On October 16, 2018, the Division and Respondents filed a Joint Motion to Continue Deadline
16 to Respond to Respondents' Motion to Require Disclosure of Opinions, Report, and to Allow
17 Deposition and Request for Hearing on the Motion ("Joint Motion"). The Division contended that it
18 planned to provide disclosure regarding its expert to the Respondents and to present its expert for
19 deposition. To allow time for this disclosure, the Division and the Respondents jointly moved to
20 continue the Division's response to the Motion to Disclose until November 7, 2018.

21 On October 18, 2018, by Procedural Order, the Joint Motion was granted and the Division's
22 deadline to file a response was continued to November 7, 2018.

23 On October 24, 2018, by Procedural Order, the hearing schedule was modified.

24 On October 26, 2018, the Division filed six Affidavits of Service regarding the Amended Notice
25 of Opportunity for Hearing.

26 On October 31, 2018, the parties filed a Stipulation Regarding Respondents' Motion to Require
27 Disclosure of Opinions, Report, and to Allow Deposition and Request for Hearing on the Motion. The
28

1 parties stipulated that the Division would not offer expert testimony and that the Respondents' Motion
2 to Disclose is moot.

3 On November 28, 2018, the Respondents filed an Updated List of Witnesses and Exhibits.

4 On December 20, 2018, a Motion to Intervene and to Continue Hearing ("Motion to Intervene")
5 was filed by counsel representing two investors ("Prospective Intervenors").

6 On January 2, 2019, the Respondents filed a Joinder in Motion to Continue Hearing.

7 On January 7, 2019, the Division filed a Response to Motion to Intervene and to Continue
8 Hearing, arguing that the Prospective Intervenors do not meet the standard for intervention and they
9 did not establish good cause to continue the hearing.

10 Also on January 7, 2019, the Division filed a Response to Respondents' Joinder in Motion to
11 Continue Hearing, arguing that the Respondents did not state good cause to continue the hearing.

12 On January 18, 2019, by Procedural Order, the Prospective Intervenors' Motion to Intervene
13 was denied. It was further ordered that the Respondents' Joinder in Motion to Continue Hearing was
14 denied.

15 On January 22, 2019, the Prospective Intervenors filed a Reply in Support of Motion to
16 Intervene and to Continue Hearing.

17 On January 28, 2019, a full public hearing was scheduled to commence before a duly authorized
18 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The parties appeared
19 through counsel. The parties announced that they had recently begun discussing settlement and
20 requested that the hearing be rescheduled to begin on January 29, 2019. The Administrative Law Judge
21 adjourned the hearing until January 29, 2019.

22 On January 29, 2019, a full public hearing was scheduled to commence before a duly authorized
23 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The parties appeared
24 through counsel. The parties announced that Pacific, Diamond, and the Eckermans had reached a
25 consent agreement with the Division, and the Division moved to vacate the hearing as to those
26 Respondents pending a consent order to be presented to the Commission. The Administrative Law
27 Judge vacated the hearing as to Pacific, Diamond, and the Eckermans. The remaining parties requested
28 that the hearing be rescheduled to begin on January 30, 2019, to allow additional time to reach a consent

1 agreement with Ms. Sandoval. The Administrative Law Judge adjourned the hearing until January 30,
2 2019.

3 On January 30, 2019, a full public hearing commenced before a duly authorized Administrative
4 Law Judge of the Commission at its offices in Phoenix, Arizona. The parties appeared through counsel,
5 although Ms. Sandoval was not present. At the conclusion of the hearing, the matter was taken under
6 advisement pending the submission of closing briefs and a Recommended Opinion and Order.

7 On March 13, 2019, the Commission issued Decision No. 77117, Order to Cease and Desist,
8 Order for Restitution, Order for Administrative Penalties and Consent to Same by: Respondents Pacific
9 Capital Enterprises LLC, Superior Diamond Management LLC, Michael Barry Eckerman, and Tonya
10 Eckerman.

11 On March 20, 2019, the Division filed its Post-Hearing Brief.

12 On April 25, 2019, Ms. Sandoval filed her Post-Hearing Brief.

13 On May 10, 2019, the Division filed its Post-Hearing Reply Brief.

14 * * * * *

15 **DISCUSSION**

16 **I. Brief Summary**

17 This is an enforcement action brought against Respondent Venessa R. Sandoval for alleged
18 violations of the Arizona Securities Act. The Division alleges that Ms. Sandoval committed fraud in
19 connection with the offer and sale of securities to six investors, in violation of A.R.S. § 44-1991(A),
20 by making untrue statements or misleading omissions of facts regarding the ownership of real estate
21 by Pacific Capital Enterprises, LLC, and a pending securities action. Respondent Spouse, Ashley
22 Abbema, is joined in this action solely for the purpose of determining the liability of the marital
23 community. The Division requests that restitution be ordered for the benefit of six investors in a total
24 amount of \$525,668.35. The Division further recommends that administrative penalties be ordered in
25 the amount of \$30,000.

26 Ms. Sandoval argues that her due process rights were violated because the hearing was held in
27 her absence. Ms. Sandoval denies that she violated A.R.S. § 44-1991(A), arguing that Pacific did, in
28 fact, own real estate at the time of the offers and sales of securities, and that the pending securities

1 action was disclosed in Pacific's private placement memorandum ("PPM").

2 **II. Testimony**

3 William Woerner

4 Mr. Woerner testified that he has been an investigator for the Division since May 2016.² Mr.
5 Woerner testified that he has 25 years of prior investigation experience as a special agent for the Federal
6 Bureau of Investigation where he worked criminal matters with a specialization in white collar crime.³
7 Mr. Woerner testified that he had been the assigned investigator in this case since its inception with the
8 Division and, in that capacity, he obtained and reviewed documents, interviewed witnesses, and
9 reported the results to management and the Division's legal team.⁴

10 Mr. Woerner testified that as recently as January 29, 2019, he has searched for documents filed
11 with the Maricopa County Recorder's Office regarding Pacific.⁵ Mr. Woerner testified that he found
12 only one deed granting real property to Pacific, a property in Paradise Valley that was transferred to
13 Pacific on December 29, 2017.⁶

14 Mr. Woerner testified that he interviewed several of Pacific's investors, including Avis Rupp.⁷
15 Mr. Woerner testified that Ms. Rupp invested \$50,000 in Pacific in October 2017.⁸ Mr. Woerner
16 testified that Ms. Rupp first learned about Pacific from Ms. Sandoval, whom Ms. Rupp knew from
17 interactions regarding Ms. Rupp's prior investment in another venture.⁹ Mr. Woerner testified that Ms.
18 Rupp discussed Pacific with Ms. Sandoval at Ms. Rupp's home in either Sun City or Sun City West,
19 Arizona.¹⁰ Mr. Woerner testified that Ms. Sandoval told Ms. Rupp that Pacific owned one property in
20 Scottsdale, Arizona, which it rented out as a vacation home.¹¹ Mr. Woerner testified that Ms. Sandoval
21 also told Ms. Rupp that her investment would be used by Pacific to pay for expenses related to this one
22 property.¹² Mr. Woerner testified that Ms. Rupp was never told anything negative about Pacific or its

23 ² Tr. at 34.

24 ³ Tr. at 35.

⁴ Tr. at 35.

25 ⁵ Tr. at 40-41.

⁶ Tr. at 41.

26 ⁷ Tr. at 41-42.

⁸ Tr. at 44-45.

27 ⁹ Tr. at 45.

¹⁰ Tr. at 45.

28 ¹¹ Tr. at 45-46.

¹² Tr. at 46.

owner by Ms. Sandoval or anyone else at Pacific.¹³ Mr. Woerner testified that when he spoke with Ms. Rupp, she was not aware of any cease and desist orders regarding Premier Asset Management Group, LLC (“PAMG”) or Mr. Eckerman.¹⁴ Mr. Woerner testified that when he spoke with Ms. Rupp, she had not received any interest payments from Pacific.¹⁵

Mr. Woerner testified that he had interviewed Pacific investor Donna Hansen.¹⁶ Mr. Woerner testified that Ms. Hansen first learned about Pacific from Ms. Sandoval, who solicited Ms. Hansen to invest.¹⁷ Mr. Woerner testified that Ms. Hansen did not know Ms. Sandoval when Ms. Sandoval first told her about Pacific.¹⁸ Mr. Woerner testified that Ms. Sandoval told Ms. Hansen that Pacific owned large homes in Paradise Valley, Arizona, that it rented out as hotels.¹⁹ Mr. Woerner testified that Ms. Hansen made a one-time investment of \$50,000 in Pacific, which she understood as being \$25,000 investments in two separate Paradise Valley homes.²⁰ Mr. Woerner testified that Ms. Sandoval told Ms. Hansen that her investment funds would be used to pay expenses related to the two homes.²¹ Mr. Woerner testified that Ms. Sandoval told Ms. Hansen that Pacific’s business was very strong and that the company had success renting rooms in the luxury homes.²² Mr. Woerner testified that Ms. Hansen made her investment approximately one week later when Ms. Sandoval returned to Ms. Hansen’s home in the Sun City area of Phoenix.²³ Mr. Woerner testified that Ms. Hansen was not told anything negative about Pacific or Mr. Eckerman prior to investing.²⁴ Mr. Woerner testified that Ms. Hansen received a private placement memorandum from Pacific approximately 30 days after making her investment.²⁵ Mr. Woerner testified that Pacific had not made all of the interest payments due to Ms. Hansen as of the time he interviewed her last.²⁶

¹³ Tr. at 46.

¹⁴ Tr. at 46.

¹⁵ Tr. at 46.

¹⁶ Tr. at 46-48.

¹⁷ Tr. at 47.

¹⁸ Tr. at 47.

¹⁹ Tr. at 48.

²⁰ Tr. at 48.

²¹ Tr. at 48.

²² Tr. at 48-49.

²³ Tr. at 49.

²⁴ Tr. at 49.

²⁵ Tr. at 49-50.

²⁶ Tr. at 50.

1 Mr. Woerner testified that he interviewed Pacific investors Clarence and Harriet Washington
 2 (the "Washingtons").²⁷ Mr. Woerner testified that Mr. Washington made an initial investment of
 3 \$50,000 in Pacific and a subsequent investment of \$25,000.²⁸ Mr. Woerner testified that Mrs.
 4 Washington made one \$50,000 investment in Pacific.²⁹ Mr. Woerner testified that the Washingtons
 5 are New York residents who also maintain a home in Sun City West, Arizona.³⁰ Mr. Woerner testified
 6 that the Washingtons first learned about Pacific when they received an unsolicited telephone call at
 7 their Arizona residence from Ms. Sandoval in approximately March or April 2017.³¹ Mr. Woerner
 8 testified that following this telephone call, Ms. Sandoval visited the Washingtons at their home in
 9 Arizona.³² Mr. Woerner testified that during this home visit, Ms. Sandoval gave the Washingtons
 10 information about the Pacific investments, including: Pacific could pay a higher return than the
 11 Washingtons were earning on their IRA accounts; Pacific owned properties in Arizona including
 12 locations in Scottsdale and Chandler; Pacific was in the business of buying homes to eventually sell
 13 for profit while renting them out in the interim as they appreciate in value.³³ Mr. Woerner testified that
 14 Ms. Sandoval told the Washingtons that their investments would be used by Pacific to purchase
 15 additional real estate in Arizona at a location of the investors' choice from a few specific areas.³⁴ Mr.
 16 Woerner testified that the Washingtons were not told anything negative about Pacific or Mr. Eckerman
 17 prior to investing.³⁵ Mr. Woerner testified that Mr. Washington made his second investment following
 18 a phone call from Ms. Sandoval soliciting the Washingtons to invest additional funds with Pacific.³⁶

19 On cross examination, Mr. Woerner testified that he did not know whether all the investors'
 20 subscription agreements stated that the purchase is subject to the terms and conditions of the
 21 confidential PPM.³⁷ Mr. Woerner testified that Pacific had a confidential PPM dated March 30, 2017,
 22

23 ²⁷ Tr. at 50, 65.

24 ²⁸ Tr. at 65-66.

25 ²⁹ Tr. at 65-66.

26 ³⁰ Tr. at 66.

27 ³¹ Tr. at 66.

28 ³² Tr. at 66.

³³ Tr. at 67.

³⁴ Tr. at 67-68.

³⁵ Tr. at 68.

³⁶ Tr. at 68-69.

³⁷ Tr. at 69-70.

1 and a second PPM dated December 31, 2017.³⁸ Mr. Woerner testified that he did not discuss the
 2 contents of the PPM with Ms. Rupp.³⁹ Mr. Woerner testified that he did not know whether Ms. Rupp
 3 received a PPM and that she told him that she was unsure what paperwork she had received regarding
 4 her investment.⁴⁰ Mr. Woerner testified that he did not recall which PPM Ms. Hansen received after
 5 she invested, or asking her if she had received two PPMs.⁴¹ Mr. Woerner testified he did not know
 6 whether the Washingtons received a PPM and that they told him that they were not sure what paperwork
 7 they had received regarding their investments.⁴²

8 Richard Brennen

9 Mr. Brennen testified that he is retired, having formerly worked as a stock broker, a CPA, and
 10 a college professor.⁴³ Mr. Brennen testified that he had met with Ms. Sandoval about Pacific in his
 11 home in Sun Lakes, Arizona.⁴⁴ Mr. Brennen testified that at this meeting, Ms. Sandoval told him
 12 Pacific had several high-end residences that the company rented to people coming to town for events.⁴⁵
 13 Mr. Brennen testified that Ms. Sandoval also told him that Pacific rented “fancy” cars.⁴⁶ Mr. Brennen
 14 testified that he received emailed pictures of “fancy houses” and that he was under the impression that
 15 Pacific owned these properties, based upon his meeting with Ms. Sandoval.⁴⁷ Mr. Brennan testified
 16 that had he been told Pacific did not, in fact, own any real estate, he would have found this information
 17 significant to his decision to invest because it would have indicated that Pacific was just a startup
 18 company.⁴⁸

19 Mr. Brennan testified that he did not receive a PPM for Pacific until January or February of
 20 2018, after he made an investment in the company on or about October 17, 2017.⁴⁹ The subscription
 21 agreement signed by Mr. Brennen stated that the “purchase of [Pacific] Units is subject to the terms
 22

23 ³⁸ Tr. at 70-71; Exhs. S-1, S-4.

24 ³⁹ Tr. at 71.

25 ⁴⁰ Tr. at 73.

26 ⁴¹ Tr. at 71-72.

27 ⁴² Tr. at 72-74.

28 ⁴³ Tr. at 60, 62.

⁴⁴ Tr. at 53, 63.

⁴⁵ Tr. at 53-54.

⁴⁶ Tr. at 53-54.

⁴⁷ Tr. at 54-56, 63.

⁴⁸ Tr. at 55.

⁴⁹ Tr. at 56-58; Exh. S-30.

1 and conditions set forth in the Confidential Private Placement Memorandum dated March 30, 2017.”⁵⁰
 2 On cross-examination, Mr. Brennan testified that he did not recall specifically, but he assumed he
 3 would have had a PPM at the time of his meetings in October 2017.⁵¹ Mr. Brennan testified that he
 4 assumed he read the PPM and that he did not recall anything in it that contradicted what he was told
 5 by Ms. Sandoval.⁵²

6 Mr. Brennan testified that he expected to receive 10 percent interest on his Pacific investment
 7 over a period of five or ten years.⁵³ Mr. Brennan testified that he received two interest payments from
 8 Pacific in 2017, four through April 2018, and one more in January 2019 that was dated December 31,
 9 2018.⁵⁴ Mr. Brennan testified that he did not receive any of his principal back from Pacific.⁵⁵

10 Mr. Brennan testified that he never had any control over Pacific’s business decisions.⁵⁶

11 Rebecca Ciscel

12 Ms. Ciscel testified that she has been employed as a forensic accountant for the Division for
 13 four years.⁵⁷ Ms. Ciscel testified that she has over a decade of experience in the accounting field
 14 preparing summaries of financial transactions for presentation.⁵⁸ Ms. Ciscel testified that she prepared
 15 a summary of financial documents from the Respondents that shows principal paid by investors to
 16 Pacific, and returns paid by Pacific to investors, from April 20, 2017 through March 30, 2018.⁵⁹ Ms.
 17 Ciscel testified that all of the investors’ principal payments were deposited into the same bank account
 18 for Pacific.⁶⁰

19 Robert Ouellette

20 Mr. Ouellette testified that he made two separate investments in Pacific, one for \$125,000, and
 21 a second for \$175,000.⁶¹ Mr. Ouellette testified that he first learned about Pacific when he received a

22 ⁵⁰ Exh. S-30 at 1.

23 ⁵¹ Tr. at 61.

24 ⁵² Tr. at 62.

25 ⁵³ Tr. at 59.

26 ⁵⁴ Tr. at 58-59.

27 ⁵⁵ Tr. at 59.

28 ⁵⁶ Tr. at 57.

⁵⁷ Tr. at 75-76.

⁵⁸ Tr. at 76-77.

⁵⁹ Tr. at 76-77; Exh. S-50.

⁶⁰ Tr. at 78.

⁶¹ Tr. at 92. Mr. Ouellette’s first investment of \$125,000 included five investments of \$25,000 made on separate days from September 2017 through November or December 2017. Tr. at 92, 123-124.

1 phone call from a woman named Sammie who had heard he was looking for an investment.⁶² Mr.
 2 Ouellette testified that shortly thereafter, in August 2017, he met with Ms. Sandoval in his home in
 3 Phoenix, Arizona.⁶³ Mr. Ouellette testified that Ms. Sandoval told him that Pacific rented properties
 4 and was seeking investments to use for the purchase of additional real estate.⁶⁴ Mr. Ouellette testified
 5 that Ms. Sandoval told him that one of Pacific's properties generated monthly profit of approximately
 6 \$20,000, based upon \$27,000 of revenue that the property generated, less \$7,000 in expenses.⁶⁵ Mr.
 7 Ouellette testified that Pacific's income exceeding its overhead was significant to his decision to invest
 8 because of his belief that a business which makes a profit in the first three years is "doing good."⁶⁶ Mr.
 9 Ouellette testified that Ms. Sandoval identified a website with information about Pacific and gave him
 10 a folder containing three leaflets each describing a large custom home in Paradise Valley owned by
 11 Pacific.⁶⁷ Mr. Ouellette testified that the three custom homes were significant to his decision to invest
 12 in Pacific because it indicated to him that Pacific was already making a profit and the company was
 13 "not on the ground floor."⁶⁸ Mr. Ouellette testified that after meeting with Ms. Sandoval in August
 14 2017, he did not have a subsequent substantive conversation with her regarding the Pacific
 15 investment.⁶⁹

16 Mr. Ouellette testified that he has had a construction business since 1982, working as a
 17 subcontractor and as a general contractor for certain out-of-state contractors.⁷⁰ Mr. Ouellette testified
 18 that his own business took four or five years to turn a profit.⁷¹ Mr. Ouellette testified that it would have
 19 been significant to his decision to invest in Pacific had he been told that the company was not profitable
 20 because he did not want to invest in something that was not profitable.⁷² Mr. Ouellette testified that
 21 his decision to invest in Pacific was influenced by the company's profitability and the 10 percent return
 22 he would receive on his investment which was "not an unrealistic number with real estate going the

23 ⁶² Tr. at 92-93, 126.

24 ⁶³ Tr. at 93, 95, 99, 125.

25 ⁶⁴ Tr. at 93-94.

26 ⁶⁵ Tr. at 94-95.

27 ⁶⁶ Tr. at 97.

28 ⁶⁷ Tr. at 95-96, 125.

⁶⁸ Tr. at 96.

⁶⁹ Tr. at 127.

⁷⁰ Tr. at 97.

⁷¹ Tr. at 97-98.

⁷² Tr. at 98.

1 way it was and is.”⁷³

2 Mr. Ouellette testified that he made his first investment in Pacific at Pacific’s office in
3 Scottsdale, Arizona, on September 14, 2017, after he decided the week before that he would make the
4 investment.⁷⁴ Mr. Ouellette testified that he paid for his investment with funds from his checking
5 account, though he initially intended to use retirement funds from a defined benefit plan.⁷⁵ Mr.
6 Ouellette testified that prior to September 14, 2017, the only documents he received from Pacific were
7 the housing summaries he received from Ms. Sandoval.⁷⁶ Mr. Ouellette testified that he signed some
8 documents when he made his investment, but he was not given an opportunity to read the papers before
9 he signed.⁷⁷ Mr. Ouellette testified that he was directed to sign in multiple places marked by “sticky
10 notes,” but no one directed him to look at any other pages among the documents.⁷⁸ When shown his
11 September 14, 2017 subscription agreement, Mr. Ouellette testified that he recognized only the page
12 that he signed.⁷⁹ Mr. Ouellette testified that, after he signed, he was given a folder containing mostly
13 single-page documents.⁸⁰ Mr. Ouellette testified that he did not recall receiving any document from
14 Pacific titled “Confidential Private Placement Memorandum” before September 14, 2017, and that he
15 did not receive a PPM in the folder of documents he received that day.⁸¹ On cross examination, Mr.
16 Ouellette testified that he did not read until later the part of the subscription agreement stating that the
17 purchase is subject to the terms set forth in the March 30, 2017 PPM.⁸² On cross-examination, Mr.
18 Ouellette testified that he never read the package of documents he received on September 14, 2017,
19 and he admitted that it was possible he could have received a PPM therein.⁸³ Mr. Ouellette testified
20 that he had not read the PPM until the date of this hearing.⁸⁴ On re-direct examination, Mr. Ouellette
21 testified that the PPMs he received after his second investment were approximately 70-80 pages, spiral
22

23 ⁷³ Tr. at 98.

24 ⁷⁴ Tr. at 99, 124.

25 ⁷⁵ Tr. at 105-106.

26 ⁷⁶ Tr. at 104.

27 ⁷⁷ Tr. at 99-101.

28 ⁷⁸ Tr. at 101-102.

⁷⁹ Tr. at 102-103; Exh. S-22.

⁸⁰ Tr. at 100-102, 104-105.

⁸¹ Tr. at 103-104, 119.

⁸² Tr. at 119-120; Exh. S-22.

⁸³ Tr. at 120, 122-123.

⁸⁴ Tr. at 121.

1 bound with a plastic cover and a green backing.⁸⁵ Mr. Ouellette testified that he did not receive a spiral
 2 bound document with a plastic cover and a green backing on or before September 14, 2017.⁸⁶ Mr.
 3 Ouellette testified that the documents he received on September 14, 2017, could not have been any
 4 greater than the size of a subscription agreement.⁸⁷

5 Mr. Ouellette testified that prior to investing, he was never told anything negative about Pacific,
 6 Mr. Eckerman or Ms. Sandoval.⁸⁸ Mr. Ouellette testified that he had never heard of PAMG before
 7 May or June of 2018.⁸⁹ Mr. Ouellette testified that it would have been significant to his decision to
 8 invest in Pacific if he had been told about a pending legal case involving Mr. Eckerman and a company
 9 he controlled regarding securities law violations, because Mr. Ouellette would not want to be involved
 10 with “somebody [that] is not doing proper business.”⁹⁰

11 Mr. Ouellette testified that he made his second investment in Pacific on or about January 18,
 12 2018, once funds could be obtained from his defined benefit plan.⁹¹ Mr. Ouellette testified that, in
 13 conjunction with this investment, he signed a document to have someone speak with his defined benefit
 14 provider to arrange for release of the funds.⁹² Mr. Ouellette testified that he also signed a subscription
 15 agreement for his second investment at Pacific’s office.⁹³ Mr. Ouellette testified that he was not given
 16 a chance to read the subscription agreement before he signed.⁹⁴ On cross-examination, Mr. Ouellette
 17 testified that he had not read the section of the subscription agreement stating that the subscriber had
 18 reviewed and analyzed the PPM provided by the company until this section was shown to him during
 19 the hearing.⁹⁵ Mr. Ouellette testified that he signed the subscription agreement either when his funds
 20 were released or a few days later when the Pacific investment was funded.⁹⁶ Mr. Ouellette testified
 21 that the day his investment was funded, after he had signed the subscription agreement, he received a
 22

23 ⁸⁵ Tr. at 130-133.

24 ⁸⁶ Tr. at 133, 135.

25 ⁸⁷ Tr. at 131. The specific subscription agreement referenced by Mr. Ouellette is 11 pages. Tr. at 131; Exh. S-24.

26 ⁸⁸ Tr. at 106.

27 ⁸⁹ Tr. at 106, 127.

28 ⁹⁰ Tr. at 106.

⁹¹ Tr. at 107-108.

⁹² Tr. at 107-108.

⁹³ Tr. at 108-110; Exh. S-24.

⁹⁴ Tr. at 110.

⁹⁵ Tr. at 121; Exh. S-24 at § 3.1(b).

⁹⁶ Tr. at 109.

1 Pacific PPM dated January 8, 2018.⁹⁷ Mr. Ouellette testified that he did not read the PPM.⁹⁸ Mr.
 2 Ouellette testified that between his September 2017 investment and his January 2018 investment, the
 3 only documents he received from Pacific were shares reflecting the amount of his investment.⁹⁹

4 Mr. Ouellette testified that he never had control over Pacific's business decisions.¹⁰⁰

5 Mr. Ouellette testified that he received some interest payments from Pacific, but not all of the
 6 interest owed to him, and that he last received an interest payment in April or May of 2018.¹⁰¹ Mr.
 7 Ouellette testified that he has not received any of his principal from Pacific, though he never asked for
 8 it to be returned.¹⁰² Mr. Ouellette testified that his retirement plans would be impacted if Pacific cannot
 9 repay his investment.¹⁰³

10 **III. Legal Argument**

11 **A. Ms. Sandoval's Failure to Appear**

12 **1. Argument**

13 Ms. Sandoval contends that the hearing should not have been conducted in her absence and that
 14 the Commission "cannot enter an order depriving her of property" without a determination of why she
 15 did not attend the hearing.¹⁰⁴ Ms. Sandoval argues that the Arizona Constitution mandates face to face
 16 confrontation of witnesses and that this requirement derives from fundamental fairness in due process,
 17 which applies even to civil matters. Ms. Sandoval cites the Arizona Constitution which provides that
 18 no person shall be deprived of property without due process of law.¹⁰⁵ Ms. Sandoval argues that due
 19 process has long been held to apply to administrative officers or boards.¹⁰⁶ Ms. Sandoval contends that
 20 any determination that a defendant was voluntarily absent is dependent upon affording the defendant a
 21 hearing to determine whether the absence was, in fact, voluntary.¹⁰⁷

22 . . .

23 ⁹⁷ Tr. at 110-111, 119.

24 ⁹⁸ Tr. at 138-139.

25 ⁹⁹ Tr. at 111.

¹⁰⁰ Tr. at 112.

¹⁰¹ Tr. at 112-113, 128.

¹⁰² Tr. at 113, 129.

¹⁰³ Tr. at 113.

¹⁰⁴ Sandoval Post-Hearing Br. at 3-4.

¹⁰⁵ Ariz. Const. art. II, § 4.

¹⁰⁶ Sandoval Post-Hearing Br. at 3-4, citing *Bank of Arizona v. Howe*, 293 F. 600 (D. Ariz. 1923).

¹⁰⁷ Sandoval Post-Hearing Br. at 4, citing *State v. Sainz*, 186 Ariz. 470, 924 P.2d 474 (App. 1996).

1 The Division contends that while Ms. Sandoval had a due process right to be present for the
 2 hearing and confront witnesses, she waived that right by failing to appear even though she had actual
 3 knowledge of the hearing date and time. The Division quotes the Arizona Court of Appeals: “When
 4 a case is regularly called for trial, the trial may proceed although one party does not appear ...”¹⁰⁸ The
 5 Division also contends that the Arizona Court of Appeals has held that a court may proceed in the
 6 absence of a party as the party’s rights are protected by counsel.¹⁰⁹ The Division notes that Ms.
 7 Sandoval was notified by procedural order that the hearing would commence on January 28, 2019, with
 8 additional hearing dates, as necessary, on January 29, 30, and 31, 2019.¹¹⁰ The Division further notes
 9 that Ms. Sandoval had actual notice of the hearing schedule as she appeared for the first day of the
 10 hearing on January 28, 2019, when the Administrative Law Judge advised the parties to return at 9:00
 11 a.m. on January 29, 2019.¹¹¹

12 The Division argues that Ms. Sandoval has not offered good cause for her failure to appear, but
 13 rather “she simply did not bother to attend after the first day.”¹¹² The Division notes that counsel for
 14 Ms. Sandoval explained on the second day of the hearing that he secured Ms. Sandoval’s appearance
 15 on the first day only by sending a car for her, and he predicted that she would not appear on the third
 16 day if she did not accept a proposed consent agreement.¹¹³ The Division further notes that on the third
 17 day of the hearing, Ms. Sandoval informed her counsel that she wanted to proceed with the hearing,
 18 but she was not present for the 9:00 a.m. start of the hearing even though her attorney had sent a car to
 19 bring her.¹¹⁴ The Division states that after a 30-minute continuance, granted by the Administrative
 20 Law Judge to see if Ms. Sandoval would arrive, Ms. Sandoval’s counsel reported that Ms. Sandoval
 21 told the driver she was not coming to the hearing.¹¹⁵

22 The Division contends that the Administrative Law Judge did not need to expressly find that
 23 Ms. Sandoval’s failure to appear was voluntary because such a finding is not required outside of

24 ¹⁰⁸ *Bloch v. Bentfield*, 1 Ariz. App. 412, 417, 403 P.2d 559, 564 (1965).

25 ¹⁰⁹ Division Reply Br. at 4, citing *Christy A. v. Arizona Dep’t of Econ. Sec.*, 217 Ariz. 299, 307 ¶ 25, 173 P.3d 463, 471 (App. 2007).

26 ¹¹⁰ Division Reply Br. at 4, citing Eleventh Procedural Order, dated October 24, 2018, at 5.

27 ¹¹¹ Tr. at 4-5.

28 ¹¹² Division Reply Br. at 4.

¹¹³ Tr. at 11.

¹¹⁴ Tr. at 23.

¹¹⁵ Tr. at 25-26.

1 criminal cases.¹¹⁶ The Division argues that the *Sainz* case, cited by Ms. Sandoval, describes the
 2 procedures for a criminal defendant's voluntary absence from a criminal trial pursuant to the rules of
 3 criminal procedure: "[W]hen using [Arizona] Rule [of Criminal Procedure] 9.1, the trial court must, if
 4 asked, determine whether the defendant's absence was, in fact, voluntary."¹¹⁷ The Division argues that
 5 even if these criminal procedure requirements applied here, the Administrative Law Judge was not
 6 required to make an express finding that Ms. Sandoval was voluntarily absent because, per *Sainz*, no
 7 one asked for such a finding.

8 2. Analysis and Conclusion

9 Pursuant to A.A.C. R14-3-109(Q), an Administrative Law Judge presiding over a hearing for
 10 the Commission may, either prior to or during a hearing, continue a hearing for any proper purpose on
 11 a showing of good cause. Here, Ms. Sandoval received notice of the commencement date of the
 12 hearing, January 28, 2019, and subsequent hearing dates, if needed, including January 29 and 30, 2019,
 13 through five written procedural orders issued by the Administrative Law Judge.¹¹⁸ As noted by the
 14 Division, Ms. Sandoval was present on the first day of the hearing, January 28, 2019, where the parties
 15 were instructed to return the next day at 9:00 a.m.¹¹⁹ Ms. Sandoval was not present at the hearing on
 16 January 29, 2019, and the parties requested to continue the hearing until the following day to allow Ms.
 17 Sandoval an opportunity to sign a proposed consent agreement.¹²⁰ Ms. Sandoval's attorney provided
 18 the following information to the Administrative Law Judge about the status of Ms. Sandoval:

19 My impression is that this is a little early in the morning for her normal
 20 operation. I am hopeful - she has not told me she won't sign, but she
 21 hasn't followed through on any number of commitments. I only got her
 22 here yesterday by sending a car for her, and she purports to have a
 23

24 ¹¹⁶ Division Reply Br. at 5, citing *Bloch*, 1 Ariz. App. at 417, 403 P.2d at 564.

25 ¹¹⁷ *Sainz*, 186 Ariz. at 473, 924 P.2d at 477.

26 ¹¹⁸ Eighth Procedural Order, dated September 6, 2018, at 4; Ninth Procedural Order, dated September 19, 2018, at 4; Tenth
 27 Procedural Order, dated October 18, 2018, at 5; Eleventh Procedural Order, dated October 24, 2018, at 5; Twelfth
 28 Procedural Order, dated January 18, 2019, at 10. These five procedural orders were mailed to counsel for Ms. Sandoval.
 When a party is represented by counsel, service shall be made upon the attorney unless the Commission orders service upon
 the party. A.A.C. R14-3-106(D). Unless otherwise specified by the Commission, service shall be made by delivering or
 mailing a copy to the last known address of the attorney or party. *Id.*

¹¹⁹ Tr. at 4-5.

¹²⁰ Tr. at 10-11.

1 transportation problem. If I can get in touch with her I am hopeful that
 2 she would sign the documents. If she doesn't[,] I expect that she would
 3 probably be a no-show, based on experience not what she's told me, so
 4 you understand completely where we are at this matter.¹²¹

5 Based on the request of counsel, the Administrative Law Judge continued the hearing to the following
 6 day.¹²²

7 On January 30, 2019, counsel for Ms. Sandoval stated that he had received a text message from
 8 her stating that she wanted to proceed with the hearing.¹²³ Counsel for Ms. Sandoval further stated that
 9 while he had sent a car to pick her up at 8:00 a.m., she was not present and he requested delaying the
 10 hearing an hour to see if she would arrive.¹²⁴ The Division opposed waiting on Ms. Sandoval.¹²⁵ The
 11 Administrative Law Judge recessed the hearing until 9:30 a.m. to allow Ms. Sandoval's counsel some
 12 time to assess his client's status.¹²⁶ When the hearing reconvened, Ms. Sandoval's counsel informed
 13 the Administrative Law Judge that Ms. Sandoval told the driver that she was not coming to the
 14 hearing.¹²⁷ Counsel further stated that Ms. Sandoval had not responded to calls and texts from him and
 15 his secretary.¹²⁸ Counsel for Ms. Sandoval requested additional time due to an "inability to adequately
 16 defend somebody" when that person is not present to provide him information regarding witness
 17 testimony.¹²⁹ The Division sought to proceed with the hearing and the Administrative Law Judge so
 18 ruled, finding that "Ms. Sandoval knew, or should have known the start time for the hearing and we
 19 have already granted her an additional half an hour and the only information we have seems to be that
 20 she is not inclined to appear."¹³⁰

21 . . .

22 . . .

24 ¹²¹ Tr. at 11.

¹²² Tr. at 12, 13.

¹²³ Tr. at 23.

¹²⁴ Tr. at 23-24.

¹²⁵ Tr. at 24.

¹²⁶ Tr. at 25-26.

¹²⁷ Tr. at 26.

¹²⁸ Tr. at 26.

¹²⁹ Tr. at 26.

¹³⁰ Tr. at 26-27.

1 From the record of the proceedings, Ms. Sandoval failed to establish good cause to continue the
 2 hearing based upon her nonappearance on January 30, 2019. Since the hearing, Ms. Sandoval has not
 3 offered any additional information regarding her failure to appear.

4 Ms. Sandoval cites a criminal law case, *Sainz*, relying upon a criminal procedure rule, Ariz. R.
 5 Crim. P. 9.1, to argue that she is entitled to a hearing regarding her nonappearance. Generally, cases
 6 before the Commission are governed by the Commission's Rules of Practice and Procedure.¹³¹ When
 7 procedure is not otherwise set forth by law, by the Commission's Rules of Practice and Procedure, or
 8 by regulation or orders of the Commission, the Arizona Rules of Civil Procedure shall apply.¹³² We
 9 are not aware, and Ms. Sandoval does not argue the existence, of any parallel provision to Criminal
 10 Rule of Procedure 9.1 in any controlling authority regarding proceedings before this Commission. "[I]t
 11 is well established that the interests of a criminal defendant require significantly more protection than
 12 civil litigants or parties to administrative proceedings."¹³³ A civil trial may proceed when one party
 13 does not appear.¹³⁴ In a proceeding to terminate parental rights, a court may proceed when the parent
 14 fails to appear because his or her rights are protected by the presence and participation of counsel.¹³⁵

15 At her request, Ms. Sandoval was afforded a hearing where she had an opportunity to testify,
 16 present documentary evidence, and confront the evidence presented against her. Ms. Sandoval failed
 17 to appear for her hearing on January 30, 2019, and she has failed to establish good cause for her
 18 nonappearance. In her absence, Ms. Sandoval was capably represented by counsel at the hearing. Ms.
 19 Sandoval has failed to demonstrate any violation of her due process rights that would prevent this
 20 Commission from rendering a decision based upon the evidence of record.

21 B. Notice and the Division's Motion to Conform

22 1. Argument

23 At the hearing, the Division moved to amend the Amended Notice to conform to the
 24 evidence.¹³⁶ Specifically, the Division stated that the Amended Notice contains an allegation that Ms.

25
 26 ¹³¹ A.A.C. R14-3-101(A).

¹³² *Id.*

¹³³ *Berenter v. Gallinger*, 173 Ariz. 75, 82, 839 P.2d 1120, 1127 (App. 1992).

¹³⁴ *Bloch*, 1 Ariz. App. at 417, 403 P.2d at 564.

¹³⁵ *Christy A.*, 217 Ariz. at 307 ¶ 25, 173 P.3d at 471.

¹³⁶ Tr. at 151.

1 Sandoval misrepresented the ownership of real estate to investors, however, the testimony of Mr.
 2 Brennen was that Ms. Sandoval created a misleading impression to that effect rather than making an
 3 affirmative misstatement.¹³⁷ As such, the Division sought to add an alternative theory of omission, in
 4 addition to misrepresentation under A.R.S. § 44-1991(A)(2), for Mr. Brennen.¹³⁸ Counsel for Ms.
 5 Sandoval objected to the Division's motion to amend the Amended Notice, arguing that "had I known
 6 that the theory was going to change, it is possible that we would have had a different view of [Ms.
 7 Sandoval's] attendance or evidence that I might present."¹³⁹ The Administrative Law Judge informed
 8 the parties that he would take the matter under advisement, that the parties should address the issue in
 9 their post-hearing briefs, and that a ruling would be included in the recommended opinion and order to
 10 the Commission.¹⁴⁰

11 In its Post-Hearing Brief, the Division argues that the motion to amend the Amended Notice
 12 was merely a precaution as the Amended Notice itself had already put the Respondents on notice of
 13 the theory of omission regarding Mr. Brennen. The Division contends that "[t]he Amended Notice
 14 only needed to 'give the opponent fair notice of the nature and basis of the claim and indicate generally
 15 the type of litigation involved.'"¹⁴¹ The Division argues that the Commission's rules call for formal
 16 documents to be liberally construed.¹⁴² The Division notes that the Amended Notice alleged "[i]n
 17 connection with the offer or sale of securities within or from Arizona ... Sandoval directly or indirectly
 18 ... (ii) made untrue statements of material fact or omitted to state material facts that were necessary in
 19 order to make the statements made not misleading in light of the circumstances under which they were
 20 made ..."¹⁴³ The Division notes that the Amended Notice goes on to state that "... Sandoval's conduct
 21 includes, but is not limited to, the following: ... b) Pacific, Eckerman, and Sandoval each
 22 misrepresented to at least two Investors that Pacific owned residential real estate."¹⁴⁴ The Division
 23 argues that the theory of omission regarding Mr. Brennen "is only a slight variation" of the Amended

24 ¹³⁷ Tr. at 151-152.

25 ¹³⁸ Tr. at 152.

26 ¹³⁹ Tr. at 152, 153.

27 ¹⁴⁰ Tr. at 153.

28 ¹⁴¹ Division Post-Hearing Br. at 7, quoting *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 ¶ 8, 189 P.3d 344, 346 (2008) (internal quotation omitted).

¹⁴² A.A.C. R14-3-106(E).

¹⁴³ Amended Notice at 5.

¹⁴⁴ *Id.*

1 Notice as untrue statements and misleading omissions are related violations of the Securities Act that
 2 are detailed in the same subsection, A.R.S. § 44-1991(A)(2). As such, the Division contends that “[t]he
 3 Amended Notice alerted Sandoval that the allegations included fraud regarding how she described to
 4 investors the real estate that Pacific’s business was based on, so it gave the Respondents fair notice of
 5 the nature and basis of the” theory of omission regarding Mr. Brennen.¹⁴⁵ In the alternative, the
 6 Division argues that if the Amended Notice did not provide notice of the theory of omission regarding
 7 Mr. Brennen, then the Division’s motion to conform the Amended Notice should be granted.

8 Ms. Sandoval, in her Post-Hearing Brief, raises no arguments opposing either the Division’s
 9 contention that the Amended Notice provided her with notice of the theory of omission regarding Mr.
 10 Brennen, or the Division’s alternative motion to conform.

11 2. Analysis and Conclusion

12 The Division’s Amended Notice alleges multiple violations of fraud in connection with the
 13 offer or sale of securities, pursuant to A.R.S. § 44-1991(A)(2), against Ms. Sandoval and the other
 14 Respondents. The Amended Notice specifically reads as follows:

15 In connection with the offer or sale of securities within or from Arizona,
 16 Respondents Pacific, Eckerman, and Sandoval directly or indirectly: (i)
 17 employed a device, scheme, or artifice to defraud; (ii) made untrue
 18 statements of material fact or omitted to state material facts that were
 19 necessary in order to make the statements made not misleading in light
 20 of the circumstances under which they were made; or (iii) engaged in
 21 transactions, practices, or courses of business that operated or would
 22 operate as a fraud or deceit upon offerees and investors. Respondents
 23 Pacific, Eckerman, and Sandoval’s conduct includes, but is not limited
 24 to, the following:

25 * * *

26 b) Pacific, Eckerman, and Sandoval each misrepresented to at least two
 27

28 ¹⁴⁵ Division Post-Hearing Br. at 7.

Investors that Pacific owned residential real estate . . .

At hearing, and in its Post-Hearing Brief, the Division alleges Ms. Sandoval violated A.R.S. § 44-1991(A)(2) in her interactions with Mr. Brennen based upon “a misleading omission about the ownership of the high-end residences used by Pacific.”¹⁴⁶

The Commission's rules provide that “[f]ormal documents will be liberally construed and defects which do not affect substantial rights of the parties will be disregarded.”¹⁴⁷ Similarly, the Arizona Court of Appeals has held that “[p]leadings before an administrative agency are liberally construed and there may be no subsequent challenge of an issue which was actually litigated if there has been reasonable notice and an opportunity to cure surprise.”¹⁴⁸

Here, the Amended Notice identifies and paraphrases the statute, A.R.S. § 44-1991, that was allegedly violated. The Amended Notice gave Ms. Sandoval reasonable notice of the allegations against her. The Amended Notice specifically identifies Ms. Sandoval as having committed a violation of A.R.S. § 44-1991 by misrepresenting to at least two investors that Pacific owned real estate. Whether the alleged misrepresentation occurred by an untrue statement of material fact or by the omission of a necessary material fact, the misrepresentation would still be a violation of A.R.S. § 44-1991(A)(2). Ms. Sandoval cannot reasonably, and does not in her Post-Hearing Brief, assert surprise over the Division’s allegation regarding Mr. Brennen. We find that the Division’s theory of omission regarding Mr. Brennen is within the scope of the allegations stated in the Amended Notice. Since the Amended Notice adequately provided notice of the Division’s allegation of omission regarding Mr. Brennen, the Division’s motion to amend the Amended Notice to conform to the evidence is moot, and therefore denied.

C. Membership Interests as Investment Contracts

The Division contends that Pacific’s membership interests are securities in the form of investment contracts. The Division notes that Pacific’s first and second PPM both call the membership interests securities.¹⁴⁹ The Division applies the *Howey*¹⁵⁰ test to determine the membership interests

¹⁴⁶ Division Post-Hearing Br. at 6.

¹⁴⁷ A.A.C. R14-3-106(E).

¹⁴⁸ *Berenter v. Gallinger*, 173 Ariz. 75, 83, 839 P.2d 1120, 1128 (App. 1992).

¹⁴⁹ Exhs. S-1 at PCE01083, S-2 at PCE1559.

¹⁵⁰ *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244 (1946).

are investment contracts if they involve an investment of money in a common enterprise with the expectation of profits from the managerial efforts of others. The Division argues that all three elements of the *Howey* test have been met because: six investors invested money in Pacific, the investors' money was "pooled for collective management," and the investors expected profits based upon the managerial efforts of Mr. Eckerman.¹⁵¹ Ms. Sandoval makes no arguments regarding whether Pacific's membership interests are securities.

Investment contracts are included within the statutory definition of a security.¹⁵² The elements of what constitutes an investment contract have been set forth in *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 66 S.Ct. 1100, 90 L.Ed. 1244 (1946), adopted as law in Arizona in *Rose v. Dobras*, 128 Ariz. 209, 624 P.2d 887 (App. 1981). Under *Howey* and *Rose*, an investment contract will be found in "any situation where (1) individuals are led to invest money (2) in a common enterprise (3) with the expectation that they will earn a profit solely through the efforts of others."¹⁵³

Six investors¹⁵⁴ invested money in Pacific totaling \$548,106.¹⁵⁵ The Investors' funds were all deposited into a single Pacific bank account, demonstrating a common enterprise through horizontal commonality.¹⁵⁶ The Investors expected a profit because Pacific's membership interests promised a 10% annual return.¹⁵⁷ Pacific's manager was Diamond, which was in turn managed by Mr. Eckerman.¹⁵⁸ Pacific's PPM provided the following information regarding control of the company:

The Manager Has Extensive Control of the Company. The Manager, by and through its officers and members, exercises virtually total control over all aspects of the Company's business operations and procedures, except for a small number of actions requiring the assent of members owning in the aggregate seventy-five percent (75%) of all membership

¹⁵¹ Division Post-Hearing Br. at 10.

¹⁵² A.R.S. § 44-1801(26).

¹⁵³ *Rose*, 128 Ariz. at 211, 624 P.2d at 889.

¹⁵⁴ Richard Brennen, Donna Hansen, Robert Ouellette, Avis Rupp, Clarence Washington, and Harriet Washington (collectively, "Investors").

¹⁵⁵ Exh. S-50.

¹⁵⁶ "Horizontal commonality requires a pooling of funds collectively managed by a promoter or third party." *Foy v. Thorp*, 186 Ariz. 151, 158, 920 P.2d 31, 38 (App. 1996).

¹⁵⁷ Exh. S-1 at PCE01089.

¹⁵⁸ Exh. S-1 at PCE01088.

1 interests of the Company entitled to vote (a “*Supermajority of the*
2 *Members*”). This means that purchasers of the Units will invest subject
3 to the risks associated with not having control of the Company. The
4 Manager has nearly complete discretion concerning all aspects of the
5 Company . . .¹⁵⁹

6 The Investors had no control over Pacific, as confirmed in the testimony of Mr. Brennen and Mr.
7 Ouellette, and their expectations of profits were subject to the managerial efforts of Diamond and Mr.
8 Eckerman.¹⁶⁰ Pacific’s membership interests meet the elements set forth under *Howey*, making them
9 investment contracts and, therefore, securities.

10 D. Fraud Violations

11 The Division contends that Ms. Sandoval engaged in multiple violations of the antifraud
12 provisions of the Securities Act, A.R.S. § 44-1991(A). A.R.S. § 44-1991(A) provides:

13 It is a fraudulent practice and unlawful for a person, in connection with
14 a transaction or transactions within or from this state involving an offer
15 to sell or buy securities, or a sale or purchase of securities, including
16 securities exempted under section 44-1843 or 44-1843.01 and including
17 transactions exempted under section 44-1844, 44-1845 or 44-1850,
18 directly or indirectly to do any of the following:

- 19 1. Employ any device, scheme or artifice to defraud.
- 20 2. Make any untrue statement of material fact, or omit to state
21 any material fact necessary in order to make the statements
22 made, in the light of the circumstances under which they were
23 made, not misleading.
- 24 3. Engage in any transaction, practice or course of business
25 which operates or would operate as a fraud or deceit.

26 . . .

27 _____
28 ¹⁵⁹ Exh. S-1 at PCE01096 (emphasis in original).

¹⁶⁰ Tr. at 58, 112.

1 An issuer of securities has an affirmative duty not to mislead potential investors.¹⁶¹ Under
 2 A.R.S. § 44-1991(A)(2), a material fact is one that “would have assumed actual significance in the
 3 deliberations of the reasonable buyer.”¹⁶² The test does not require an omission or misstatement to
 4 actually have been significant to a particular buyer.¹⁶³ Materiality will also be found when there is a
 5 “substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable
 6 investor as having significantly altered the total mix of information made available.”¹⁶⁴

7 1. Transactions Within or From Arizona

8 Untrue statements or misleading omissions may violate A.R.S. § 44-1991(A) when they are
 9 made in connection with transactions within or from this state involving an offer or sale of securities.
 10 The Division argues that Ms. Sandoval’s untrue statements and misleading omissions were made in
 11 meetings with six investors to promote the Pacific membership interests.¹⁶⁵ The Division contends
 12 that the offers and sales were made within and from Arizona because all six investors lived in Arizona
 13 and Ms. Sandoval met with each of them in their respective Arizona homes to discuss the Pacific
 14 membership interests.¹⁶⁶ The Division further notes that Pacific was located in Arizona from at least
 15 March 30, 2017 to March 30, 2018, the period when all of Pacific’s membership interests were sold to
 16 the Investors.¹⁶⁷

17 Ms. Sandoval, in her closing brief, has not contested the Division’s assertions that her
 18 discussions with the Investors constituted transactions involving an offer or sale of securities and that
 19 these transactions occurred within or from Arizona.

20 The record established that Ms. Sandoval offered and sold Pacific investments to six investors
 21 in their Arizona homes. Ms. Sandoval’s offer and sale of Pacific investments to these Investors
 22 constituted transactions within or from the state, as required to find a violation under A.R.S. § 44-
 23 1991(A).

24 . . .

25 ¹⁶¹ *Trimble*, 152 Ariz. at 553, 733 P.2d at 1136 (App. 1986).

26 ¹⁶² *Aaron v. Fromkin*, 196 Ariz. 224, 227 ¶ 14, 994 P.2d 1039, 1042 (App. 2000).

27 ¹⁶³ *Hirsch*, 237 Ariz. at 464 ¶ 27, 352 P.3d at 933.

28 ¹⁶⁴ *Caruthers v. Underhill*, 230 Ariz. 513, 524 ¶ 43, 287 P.3d 807, 818 (App. 2012) (internal quotations omitted).

¹⁶⁵ The six investors are Mr. Brennen, Ms. Hansen, Mr. Ouellette, Ms. Rupp, Mr. Washington, and Mrs. Washington.

¹⁶⁶ Tr. at 45, 49, 53, 63, 66, 99.

¹⁶⁷ Amended Notice at ¶ 9; Amended Answer at ¶ 7; Exh. S-5.

1 2. Real Estate Ownership

2 a) Argument

3 The Division contends that, while describing the Pacific investment opportunity, Ms. Sandoval
4 told Ms. Hansen, Mr. Ouellette, Ms. Rupp, Mr. Washington, and Mrs. Washington that Pacific owned
5 one or more pieces of real estate that Pacific rented out for its business.¹⁶⁸ The Division further
6 contends that Ms. Sandoval omitted to tell Mr. Brennen that Pacific did not own any real estate. The
7 Division argues that Ms. Sandoval's omission was misleading because she told Mr. Brennen that
8 Pacific had several high-end residences that it rented out to people, giving him the impression that
9 Pacific owned these residences.¹⁶⁹

10 The Division contends that, at the time Ms. Sandoval made these statements and omissions,
11 Pacific did not own any real estate. The Division contends that Ms. Sandoval's statements and
12 omissions were made before the Investors made their first investments, between April 24, 2017, and
13 October 17, 2017.¹⁷⁰ The Division argues that a search of the Maricopa County Recorder's records
14 revealed only one recorded deed for Pacific, which was recorded in April 2018 for a conveyance
15 purportedly made on December 29, 2017.¹⁷¹ The Division notes that Pacific's October 31, 2017 list of
16 residential real estate that it owned, possessed, optioned, or leased, listed only one property, 8812 N.
17 65th Street, Paradise Valley, Arizona 85253 (the "65th Street Property").¹⁷² The Division argues that
18 the 65th Street Property was not owned by Pacific, but rather the owner executed an agreement for sale
19 for the 65th Street Property (the "Agreement for Sale") to a company called Forty Sixth Place, LLC,
20 which subsequently sold its interest in the Agreement for Sale to Pacific.¹⁷³ The Agreement for Sale
21 allowed Pacific to purchase the 65th Street Property if Pacific made principal installment payments and
22 paid the full \$2,750,000 purchase price by August 2019.¹⁷⁴ The Division contends that Pacific did not
23 pay the purchase price to consummate the Agreement for Sale, as evidenced by the lack of a recorded
24

25 _____
¹⁶⁸ Tr. at 45-49, 67-69, 93-95.

26 ¹⁶⁹ Tr. at 52-56.

27 ¹⁷⁰ Exh. S-5.

¹⁷¹ Tr. at 41.

¹⁷² Tr. at 39; Exh. S-39.

¹⁷³ Exhs. S-40 at 1, S-41 at 1, S-42 at 3.

¹⁷⁴ Exh. S-41 at 2.

1 deed conveying the 65th Street Property to Pacific.¹⁷⁵ The Division notes that the Agreement for Sale
2 allowed Pacific to possess the 65th Street Property during the term of the Agreement for Sale.¹⁷⁶

3 The Division contends that Ms. Sandoval's statements and omissions to investors regarding
4 Pacific's ownership of real estate were material. The Division argues that "[r]eal estate ownership was
5 material because reliable access to real estate at a favorable price that could be rented at a profit was
6 central to Pacific's business."¹⁷⁷ Consistent with its argument that the ownership of real estate was
7 material information, the Division notes that Mr. Ouellette and Mr. Brennan testified that whether
8 Pacific owned real estate was significant to their decisions to invest in Pacific.¹⁷⁸

9 The Division contends that Pacific's possessory interest in the 65th Street Property was not a
10 substitute for ownership. The Division notes that the possessory interest lasted only until August 2019,
11 with the option of a two-year extension to August 2021 for a \$50,000 fee.¹⁷⁹ The Division states that
12 Pacific acquired its interest in the Agreement for Sale in May 2017, giving Pacific just over four years
13 to possess the 65th Street Property before being required to pay the remainder of the \$2,750,000
14 purchase price or losing all equity from previously made installment payments.¹⁸⁰ The Division notes
15 that by August 2021, the down payment and principal installment payments of \$50,000 every six
16 months would have totaled \$750,000, leaving \$2M left for the purchase price, significantly more than
17 the \$1,200,000 that Pacific reportedly raised from its investors.¹⁸¹ The Division argues that compared
18 to conventional real estate purchase financing, the Agreement for Sale gave Pacific only a short window
19 to profit from its use of the 65th Street Property before needing a large amount of capital to keep it.

20 The Division further notes that, pursuant to the deed of trust between the owner of the 65th
21 Street Property and her lender, the lender had the right to demand full payment of the owner's deed of
22 trust note if the owner sold or transferred any interest in the 65th Street Property without the lender's
23 prior written consent.¹⁸² The Division states that the owner did not represent in the Agreement for Sale

24
25 ¹⁷⁵ Tr. at 41.

¹⁷⁶ Exh. S-41 at 3.

26 ¹⁷⁷ Division Post-Hearing Br. at 13.

¹⁷⁸ Tr. at 55, 96.

27 ¹⁷⁹ Exh. S-41 at 2-3.

¹⁸⁰ Exh. S-40.

28 ¹⁸¹ Exhs. S-5, S-41 at 2.

¹⁸² Exh. S-42 at 12.

1 that she had received the lender's prior written consent.¹⁸³ The Division argues that if the owner had
 2 not obtained such consent prior to executing the Agreement for Sale, Pacific's possessory interest could
 3 have been "wiped out at any time if the owner loses the property to the lender."¹⁸⁴

4 The Division further argues that even if Pacific actually owned the 65th Street Property, Ms.
 5 Sandoval made material misstatements to Ms. Hansen, Mr. Ouellette, and the Washingtons by telling
 6 these investors that Pacific owned multiple real estate properties, thereby exaggerating Pacific's
 7 holdings.¹⁸⁵

8 Ms. Sandoval contends that while the Agreement for Sale on the 65th Street Property was
 9 recorded in 2018, the conveyance was documented on May 5, 2017.¹⁸⁶ Ms. Sandoval argues that the
 10 Agreement for Sale created an ownership interest for Pacific similar to that of a person who owns a
 11 home subject to a mortgage. Ms. Sandoval contends that a purchaser of real property under contract¹⁸⁷
 12 has "a very real interest in the property which can only be terminated by foreclosure or forfeiture in
 13 accordance with A.R.S. § 33-742."¹⁸⁸

14 ¹⁸³ Exh. S-41.

15 ¹⁸⁴ Division Post-Hearing Br. at 14.

16 ¹⁸⁵ Tr. at 47-49, 67-69, 93-95.

17 ¹⁸⁶ Exh. S-40.

18 ¹⁸⁷ A.R.S. § 33-741 provides, in pertinent part:

19 2. "Contract" means a contract for conveyance of real property, a contract for deed, a contract to convey, an
 20 agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in
 21 property and under which the seller is obligated to convey to the purchaser the remainder of the seller's title in the
 22 property, whether legal or equitable, on payment in full of all monies due under the contract. This article does not
 23 apply to purchase contracts and receipts, escrow instructions or similar executory contracts which are intended to
 24 control the rights and obligations of the parties to executory contracts pending the closing of a sale or purchase
 25 transaction.

26 ¹⁸⁸ Sandoval Post-Hearing Br. at 2. A.R.S. § 33-742 provides:

- 27 A. If a purchaser is in default by failing to pay monies due under the contract, a seller may, after expiration of the
 28 applicable period stated in subsection D of this section and after serving the notice of election to forfeit stated in
 section 33-743, complete the forfeiture of the purchaser's interest in the property in the manner provided by section
 33-744 or 33-745. If the contract provides that the seller may elect to accelerate the principal balance due under
 the contract to the seller on the purchaser's failure to pay the monies due, the seller may accelerate the principal
 balance due to the seller at any time after the purchaser has failed to pay the monies due under the contract. The
 acceleration may occur before or after the expiration of the applicable period stated in subsection D of this section
 and without serving the notice of election to forfeit stated in section 33-743. If the seller elects to accelerate the
 principal balance due to the seller, the seller may only foreclose the contract as a mortgage in the manner provided
 by section 33-748. If a purchaser is in default under the contract for reasons other than failing to pay monies due
 under the contract, the seller may only foreclose the contract as a mortgage in the manner provided by section 33-
 748.
- B. The interest of a purchaser in any personal property included in a contract is subject to forfeiture or foreclosure in
 the same manner as the real property, except that forfeiture or foreclosure does not affect or impair the rights of a
 holder of a security interest whose interest in the personal property is not subordinate to that of the seller.
- C. If a contract provides that time is of the essence, a waiver of that provision occurs only if the seller has accepted
 monies due under the contract in an amount which is less than the total monies due under the contract at the time

Ms. Sandoval argues that the PPM described Pacific's ownership in the 65th Street Property as being in the nature of a purchase agreement.¹⁸⁹ Regardless, Ms. Sandoval contends that the statement that Pacific owned the 65th Street Property is not erroneous despite the debt on the property. Ms. Sandoval argues that "[i]n common business usage, the owner is the party with equitable title ... who has a possessory interest in the property," rather than "the person carrying the debt."¹⁹⁰ Ms. Sandoval further argues that ownership of the property started with the date of the agreement, regardless of when it was recorded.

In its Reply Brief, the Division reasserts its position that, at the time of the relevant investments, Pacific did not own any real estate, including the 65th Street Property, for which the Agreement for Sale only gave equitable title with the right to acquire legal title upon payment of the purchase price. The Division contends that the seller of the 65th Street Property remains the owner of the property until Pacific pays the purchase price.¹⁹¹ The Division notes that the lack of any recorded deed conveying legal title to Pacific shows that Pacific did not pay the purchase price to become the owner of the 65th Street Property, which is corroborated by Pacific's January 2018 PPM.¹⁹²

of the acceptance. Receipt of any monies due under the contract by an account servicing agency does not constitute acceptance by the seller. A seller's delay in exercising any remedy granted either by the contract or by law does not constitute a waiver of a time is of the essence provision. If the time of the essence provision has been waived, the seller may reinstate the provision by serving a written notice on the purchaser and the account servicing agent, if one has been appointed, requiring strict performance of the purchaser's obligations to pay monies due under the contract. The notice shall be served, either by delivery in person or deposit in the United States mail, first class, postage prepaid, at least twenty days prior to the date on which the seller will require the purchaser to pay the monies due under the contract. A copy of the notice need not be recorded in the county in which the real property is located or served on any person other than the purchaser and the account servicing agent, if one has been appointed.

D. Forfeiture of the interest of a purchaser in the property for failure to pay monies due under the contract may be enforced only after expiration of the following periods after the date such monies were due:

1. If there has been paid less than twenty per cent of the purchase price, thirty days.
2. If there has been paid twenty per cent, or more, but less than thirty per cent of the purchase price, sixty days.
3. If there has been paid thirty per cent, or more, but less than fifty per cent of the purchase price, one hundred and twenty days.
4. If there has been paid fifty per cent, or more, of the purchase price, nine months.

E. For the purpose of computing the percentage of the purchase price paid under subsection D of this section, the total of only the following constitutes payments on the purchase price:

1. Down payments paid to the seller.
2. Principal payments paid to the seller on the contract.
3. Principal payments paid to other persons who hold liens or encumbrances on the property, the principal portion of which constitutes a portion of the purchase price, as stated under the contract.

¹⁸⁹ Sandoval Post-Hearing Br. at 2, citing Exh. 2 at PCE 1583.

¹⁹⁰ Sandoval Post-Hearing Br. at 2.

¹⁹¹ Citing *Wayt v. Wayt*, 123 Ariz. 444, 446, 600 P.2d 748, 750 (1979).

¹⁹² Tr. at 41; Exh. S-2 at PCE 1583.

1 The Division argues against Ms. Sandoval analogizing Pacific's real property interest to that of
 2 a homeowner with a mortgage. The Division states that an owner of a home subject to a mortgage has
 3 legal title to the real estate with the mortgage lender only having a lien.¹⁹³ The Division argues that
 4 here, the seller of the 65th Street Property had legal title, not Pacific.

5 The Division further contends that while Pacific's January 2018 PPM described the Agreement
 6 for Sale, all of the relevant investors first invested before January 2018.¹⁹⁴ The Division notes that
 7 while some investors received Pacific's March 2017 PPM before investing, Pacific did not acquire its
 8 interest in the 65th Street Property until May 5, 2017.¹⁹⁵

9 In the alternative, the Division contends that even if the Agreement for Sale had given Pacific
 10 ownership of the 65th Street Property, Ms. Sandoval still made untrue statements to Ms. Hansen, Mr.
 11 Ouellette, and the Washingtons, and gave Mr. Brennen a misleading impression, that Pacific owned
 12 multiple real estate properties when it would have owned, at most, only the 65th Street Property
 13 between May 5, 2017, and October 31, 2017.¹⁹⁶ The Division further notes that the Washingtons
 14 invested on April 5, 2017, before Pacific acquired an interest in the 65th Street Property, and, therefore,
 15 Ms. Sandoval's statements to them were untrue regardless of the nature of Pacific's interest.¹⁹⁷

16 b) Analysis and Conclusion

17 The evidence of record established that Ms. Sandoval told investors Ms. Hansen, Mr. Ouellette,
 18 Ms. Rupp, Mr. Washington, and Mrs. Washington that Pacific owned real estate that it rented for
 19 business purposes.¹⁹⁸ Ms. Sandoval further told Mr. Brennan that Pacific had several high-end
 20 residences that Pacific rented out, giving Mr. Brennan the impression that Pacific owned these
 21 residences, without telling him that Pacific did not, in fact, own any real estate.¹⁹⁹

22 In considering whether Ms. Sandoval's statements and omissions constituted violations of
 23 A.R.S. § 44-1991(A)(2) as to these six investors, we must determine whether facts regarding Pacific's
 24 real estate ownership were material. In the March 2017 PPM, Pacific stated that it "is in the business

25 ¹⁹³ Citing *Cooley v. Veling*, 19 Ariz. App. 208, 209, 505 P.2d 1381, 1382 (1973).

26 ¹⁹⁴ Exh. S-5.

27 ¹⁹⁵ Exhs. S-1, S-40.

28 ¹⁹⁶ Tr. at 48, 53-54, 67, 93; Exhs. S-39.

¹⁹⁷ Exhs. S-5, S-39.

¹⁹⁸ Tr. at 45-49, 67-69, 93-95.

¹⁹⁹ Tr. at 52-56.

1 of acquiring, leasing, managing, operating, and disposing of residential properties (“Residences”)
 2 located primarily in the State of Arizona in Maricopa County, and making private loans to affiliated
 3 and nonaffiliated persons (“Loans”), which may or may not be secured by a junior lien on real property
 4 owned by the borrower.”²⁰⁰ Pacific stated that its use of investment proceeds would primarily be
 5 toward the acquisition of residences with only five percent of funds going toward the making of
 6 loans.²⁰¹ Pacific stated that it sought to acquire residences individually priced between \$300,000 and
 7 \$5,000,000 where “the owners have few options for sale and who are willing to sell at a discount to
 8 fair market value, or in Residences which with limited renovation can offer increased market value.”²⁰²
 9 Once acquired, residences may be improved, then sold or leased, including short-term vacation or
 10 corporate rentals.²⁰³ Pacific’s “principal investment objectives for the Residences are to receive
 11 revenue by renting the Residences, and to realize growth in the value of the Residences upon the
 12 ultimate sale of a Residence.”²⁰⁴ Pacific represented a timeline of holding and renting residences for
 13 one to seven years after acquisition to allow for appreciation of the property before sale, whereas other
 14 residences could be renovated and sold for profit prior to one year from the purchase date.²⁰⁵

15 Pacific’s business primarily involved the rental and ultimate sale of acquired residences. For
 16 Pacific to be profitable, it had to have such residences at its disposal. We find that Pacific’s ownership
 17 of real estate would be significant to a reasonable investor and, therefore, constitutes a material fact
 18 under A.R.S. § 44-1991(A)(2).

19 Having found Ms. Sandoval’s statements and omissions regarding Pacific’s ownership of real
 20 estate to be material, we must determine next whether her statements were untrue and her omissions
 21 misleading. Key to this inquiry is whether the Agreement for Sale on the 65th Street Property can be
 22 considered “ownership” of that property. By definition, ownership is “[t]he bundle of rights allowing
 23 one to use, manage and enjoy property, including the right to convey it to others.”²⁰⁶

24 . . .

25 ²⁰⁰ Exh. S-1 at PCE01084 (italics omitted).

26 ²⁰¹ Id. at PCE01097.

²⁰² Id. at PCE01084, PCE01088, PCE01098.

27 ²⁰³ Id. at PCE01084, PCE01099.

²⁰⁴ Id. at PCE01084.

²⁰⁵ Id. at PCE01098.

28 ²⁰⁶ *Ownership*, Black’s Law Dictionary (11th Ed. 2019).

Ms. Sandoval argues that Pacific's equitable interest in the 65th Street Property acquired in the Agreement for Sale establishes ownership. Indeed, the Arizona Court of Appeals has held that "[a]t the moment a binding contract for sale of land is executed, equity treats the vendee as the owner of the realty" while "[t]he vendor, though holder of the legal title until the transaction closes, holds it as personalty in trust for the vendee, to whom all beneficial interest passes."²⁰⁷ However, the Arizona Supreme Court has held that "[a] contract for the sale of realty does not effect a transfer of legal title. The vendor remains the owner of the legal estate, while the vendee holds an equitable interest in the property."²⁰⁸ The Arizona Supreme Court has further held that an owner of equitable title "was not the legal owner of the property because its interest was not of record."²⁰⁹

Pacific's equitable interest in the 65th Street Property may have allowed Pacific to possess the property and use it for short-term rentals. However, Pacific stated in the March 2017 PPM that its acquired residences would ultimately be sold for profit. Sale of the properties would require Pacific to have legal title in the residences it "owned." We find that within the context of the marketing of the Pacific investment to potential investors, an assertion of "ownership" of property meant more than just an equitable interest; it would have required legal ownership. As such, we conclude that Ms. Sandoval committed six violations of A.R.S. § 44-1991(A)(2) by making untrue statements or omissions of material fact regarding Pacific's ownership of real estate to six investors: Ms. Hansen, Mr. Ouellette, Ms. Rupp, Mr. and Mrs. Washington, and Mr. Brennen.

3. Omission Regarding Pending Securities Action

a) Argument

The Division contends that Ms. Sandoval misleadingly omitted to tell Ms. Hansen and Mr. Ouellette, prior to his first investment, that Mr. Eckerman and Pacific affiliate PAMG were subject to a temporary order to cease and desist violating the Securities Act arising from alleged securities fraud and registration violations in a case where Ms. Sandoval was also a respondent.²¹⁰ The Division states

²⁰⁷ *Cote v. A. J. Bayless Markets, Inc.*, 128 Ariz. 438, 443, 626 P.2d 602, 607 (App. 1981).

²⁰⁸ *Wayt*, 123 Ariz. at 446, 600 P.2d at 750.

²⁰⁹ *Dunlap Inv'r's Ltd. v. Hogan*, 133 Ariz. 130, 132, 650 P.2d 432, 434 (1982).

²¹⁰ The Commission takes judicial notice of *Premier Asset Management Group*, Temporary Order to Cease and Desist and Notice of Opportunity for Hearing dated December 12, 2016, A.C.C. Docket No. S-20996A-16-0467 ("December 2016 Temporary Order") at 4-5. The Commission also takes judicial notice of *Premier Asset Management Group*, Amended

1 that Ms. Hansen and Mr. Ouellette were not informed of the December 2016 Temporary Order because
 2 they did not receive a PPM prior to investing and they were told nothing negative about Pacific or Mr.
 3 Eckerman before investing.²¹¹

4 The Division argues that Ms. Sandoval's omission was misleading because her discussions with
 5 Ms. Hansen and Mr. Ouellette about the investment opportunity implied that Pacific's offering was
 6 lawful.²¹² The Division argues that a statement with misleading implications is a misleading
 7 statement.²¹³ The Division contends that a reasonable investor would find material the existence of
 8 pending legal action against Pacific's de facto manager, affiliate, and salesperson for securities fraud.
 9 The Division argues that regardless of whether the allegations were true, knowledge of the temporary
 10 order would prompt a reasonable investor to ask follow-up questions about the legal action and the
 11 current offering that would be significant to the deliberations of the reasonable investor and alter the
 12 total mix of information he or she had about Pacific. The Division notes that Mr. Ouellette testified
 13 that knowledge of the pending action would have been significant to him because it would raise doubts
 14 as to whether Pacific was doing proper business.²¹⁴

15 Ms. Sandoval contends that the Division's alleged omission about the pending securities action
 16 relates only to two investors and that the PPM clearly showed that such an action was pending.²¹⁵ Ms.
 17 Sandoval argues that the oral and hearsay testimony lacks the credibility to trump the PPM.

18 In its Reply Brief, the Division argues that the PPM only disclosed information about the
 19 December 2016 Temporary Order to investors who received the PPM before investing. The Division
 20 reasserts that Ms. Hansen did not receive the PPM before investing and Mr. Ouellette did not receive
 21 the PPM before making his first investment and, therefore, Ms. Sandoval omitted information about
 22 the December 2016 Temporary Order.

23 . . .

24 . . .

25 Notice of Opportunity for Hearing dated March 8, 2017, A.C.C. Docket No. S-20996A-16-0467 ("March 2017 Amended
 26 Notice") at 1, 6-7, which added Ms. Sandoval as a respondent.

27 ²¹¹ Tr. at 49-50, 99, 104-105, 106, 119, 131-134, 135.

²¹² Tr. at 47-49, 93-95.

²¹³ Citing *State v. Schwenke*, 222 P.3d 768, 773 (Utah App. 2009).

²¹⁴ Tr. at 106.

²¹⁵ Exhs. S-1 at PCE01102-PCE01103, S-2 at PCE1586.

b) Analysis and Conclusion

Pacific's March 2017 PPM stated that PAMG and Mr. Eckerman were named in the December 2016 Temporary Order and that Ms. Sandoval was named in the March 2017 Amended Notice.²¹⁶ However, the evidence established that Ms. Hansen and Mr. Ouellette did not receive the PPM prior to investing in Pacific.²¹⁷ The record further established that Ms. Sandoval did not tell Ms. Hansen and Mr. Ouellette about the December 2016 Temporary Order prior to their investing in Pacific.²¹⁸

Ms. Sandoval does not argue against our finding the existence of the December 2016 Temporary Order to have been a material fact. Indeed, the Respondents having included information about the December 2016 Temporary Order in their March 2017 PPM evinces an acknowledgement of its materiality. The allegations of securities fraud against PAMG, Mr. Eckerman, and Ms. Sandoval constituted information that a reasonable investor would have considered significant. We find Ms. Sandoval's failure to disclose the existence of the December 2016 Temporary Order to Ms. Hansen and Mr. Ouellette constituted the omission of a material fact. We agree with the Division's contention that Ms. Sandoval's discussions with Ms. Hansen and Mr. Ouellette about the Pacific investment implied that the offering was being conducted lawfully, a misleading assertion considering the outstanding securities fraud allegations against PAMG, Mr. Eckerman and Ms. Sandoval at the time. We conclude that Ms. Sandoval committed two violations of A.R.S. § 44-1991(A)(2) by omitting to state a material fact regarding the December 2016 Temporary Order to two investors: Ms. Hansen and Mr. Ouellette.

D. Marital Community Liability

The Division contends that the marital community of Ms. Sandoval and Respondent Spouse is subject to any order of restitution or administrative penalties. Ms. Sandoval raises no contentions regarding liability of the marital community.

The Commission has the authority to join a spouse in an action to determine the liability of the marital community.²¹⁹ With limited exceptions, all property acquired by either the husband or the wife

²¹⁶ Exh. S-1 at PCE01102-PCE01103.

²¹⁷ Tr. at 49-50, 99, 104-105, 119, 131-134, 135.

²¹⁸ Tr. at 49, 106.

²¹⁹ A.R.S. § 44-2031. Jurisdiction and venue of offenses and actions; joinder of spouse

during marriage is the community property of both husband and wife.²²⁰ The Arizona Supreme Court has found that “the presumption of law is, in the absence of the contrary showing, that all property acquired and all business done and transacted during coverture, by either spouse, is for the community.”²²¹

Under A.R.S. § 25-214(B), “spouses have equal management, control and disposition rights over their community property and have equal power to bind the community.”²²² Either spouse may contract debts and otherwise act for the benefit of the community except as prohibited under A.R.S. § 25-214. “[A] debt is incurred at the time of the actions that give rise to the debt.”²²³ “In an action on

A. The superior court in this state shall have jurisdiction over violations of this chapter, the rules and orders of the commission under this chapter and all actions brought to enforce any liability or duty created under this chapter, except actions or proceedings brought under section 44-2032, paragraph 2, 3 or 4 or appeals filed under article 12 of this chapter, over which the superior court in Maricopa county shall have exclusive jurisdiction.

B. Any action authorized by this chapter may be brought in the county in which the defendant is found, is an inhabitant or transacts business, or in the county where the transaction took place, and in such cases, process may be served in any other county in which the defendant is an inhabitant or in which the defendant is found.

C. The commission may join the spouse in any action authorized by this chapter to determine the liability of the marital community. This subsection does not authorize the commission to join any individual who is divorced from the defendant at the time an action authorized by this chapter is filed.

²²⁰ **A.R.S. § 25-211. Property acquired during marriage as community property; exceptions; effect of service of a petition**

A. All property acquired by either husband or wife during the marriage is the community property of the husband and wife except for property that is:

1. Acquired by gift, devise or descent.

2. Acquired after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal separation or annulment.

B. Notwithstanding subsection A, paragraph 2, service of a petition for dissolution of marriage, legal separation or annulment does not:

1. Alter the status of preexisting community property.

2. Change the status of community property used to acquire new property or the status of that new property as community property.

3. Alter the duties and rights of either spouse with respect to the management of community property except as prescribed pursuant to section 25-315, subsection A, paragraph 1, subdivision (a).

²²¹ *Johnson v. Johnson*, 131 Ariz. 38, 45, 638 P.2d 705, 712 (1981), citing *Benson v. Hunter*, 23 Ariz. 132, 134-35, 202 P. 233, 233-34 (1921).

²²² **A.R.S. § 25-214. Management and control**

A. Each spouse has the sole management, control and disposition rights of each spouse's separate property.

B. The spouses have equal management, control and disposition rights over their community property and have equal power to bind the community.

C. Either spouse separately may acquire, manage, control or dispose of community property or bind the community, except that joinder of both spouses is required in any of the following cases:

1. Any transaction for the acquisition, disposition or encumbrance of an interest in real property other than an unpatented mining claim or a lease of less than one year.

2. Any transaction of guaranty, indemnity or suretyship.

3. To bind the community, irrespective of any person's intent with respect to that binder, after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal separation or annulment.

²²³ *Arab Monetary Fund v. Hashim*, 219 Ariz. 108, 111, 193 P.3d 802, 805 (Ct. App. 2008).

such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or obligation.”²²⁴ “A debt incurred by a spouse during marriage is presumed to be a community obligation; a party contesting the community nature of a debt bears the burden of overcoming that presumption by clear and convincing evidence.”²²⁵

Ms. Sandoval and Respondent Spouse were married during the relevant times of this complaint.²²⁶ Any debt created by an order for restitution and administrative penalties arising from the violations committed by Ms. Sandoval would be considered as having been incurred at the time of the violation. No evidence has been presented to rebut the legal presumption that such debt would be a community obligation.

F. Remedies

The Division requests that Ms. Sandoval be ordered to pay restitution and administrative penalties for violations of the Arizona Securities Act. The Division further requests that Ms. Sandoval be ordered to cease and desist from further violations of the Securities Act. Ms. Sandoval makes no specific arguments regarding the imposition of restitution, administrative penalties, or a cease and desist order.

1. Restitution

The Division contends that the Commission should order Ms. Sandoval to pay restitution in the amount of \$525,668.35 plus pre-order interest from the dates of the investments of the six investors, as reflected in Exhibit S-5.

The Commission has the authority to order restitution pursuant to A.R.S. § 44-2032.²²⁷ We

²²⁴ A.R.S. § 25-215(D).

²²⁵ *Hrudka v. Hrudka*, 186 Ariz. 84, 91-92, 919 P.2d 179, 186-87 (Ct. App. 1995).

²²⁶ Amended Notice at ¶¶ 6-7; Amended Answer at ¶¶ 4-5.

²²⁷ A.R.S. § 44-2032 provides, in pertinent part:

If it appears to the commission, either on complaint or otherwise, that any person has engaged in, is engaging in or is about to engage in any act, practice or transaction that constitutes a violation of this chapter, or any rule or order of the commission under this chapter, the commission, in its discretion may:

1. Issue an order directing such person to cease and desist from engaging in the act, practice or transaction, or doing any other act in furtherance of the act, practice or transaction, and to take appropriate affirmative action within a reasonable period of time, as prescribed by the commission, to correct the conditions resulting from the act, practice or transaction including, without limitation, a requirement to provide restitution as prescribed by rules of the commission. ...

1 have found Ms. Sandoval to have committed violations of A.R.S. § 44-1991(A) regarding six investors
 2 in Pacific. The record established these six investors invested a combined \$548,106 in Pacific and
 3 received combined returns totaling \$22,437.65, leaving a remaining principal amount of
 4 \$525,668.35.²²⁸ Accordingly, Ms. Sandoval is liable for restitution in the amount of \$525,668.35, plus
 5 interest.

6 2. Administrative Penalties

7 The Division notes that a maximum administrative penalty of \$40,000 may be assessed against
 8 Ms. Sandoval based on a total of eight violations: six untrue statements or omissions regarding
 9 ownership of real property and two omissions regarding the December 2016 Temporary Order. The
 10 Division recommends an administrative penalty in the amount of \$30,000. The Division does not state
 11 its reasoning for the recommended penalty amount and cites no aggravating factors. Though not
 12 successful as a defense, Ms. Sandoval's contention that Pacific's equitable interest in the 65th Street
 13 Property constituted ownership may be considered a mitigating factor.

14 Under A.R.S. § 44-2036(A), the Commission has authority to assess an administrative penalty
 15 of no more than \$5,000 for each violation committed.²²⁹ We have found that Ms. Sandoval committed
 16 eight violations of A.R.S. § 44-1991. While we consider Pacific's equitable interest in the 65th Street
 17 Property to be a mitigating factor, we also consider Ms. Sandoval's representation to several investors
 18 that Pacific owned multiple properties to be an aggravating factor. Considering the totality of the
 19 circumstances, we find that an administrative penalty of \$25,000 against Ms. Sandoval is appropriate.

20 * * * * *

21 Having considered the entire record herein and being fully advised in the premises, the
 22 Commission finds, concludes, and orders that:

23 FINDINGS OF FACT

- 24 1. Since at least March 30, 2017, Venessa R. Sandoval has been a resident of Arizona.²³⁰

25
 26 ²²⁸ Exh. S-50.

²²⁹ A.R.S. § 44-2036 provides, in pertinent part:

27 A. A person who, in an administrative action, is found to have violated any provision of this chapter or any rule or
 order of the commission may be assessed an administrative penalty by the commission, after a hearing, in an
 28 amount of not to exceed five thousand dollars for each violation.

²³⁰ Amended Notice at ¶ 6; Amended Answer at ¶ 4.

2. During the relevant timeframe of this case, Ashley Abbema was the spouse of Ms. Sandoval.²³¹

3. Pacific Capital Enterprises, LLC, is a company that acquired a possessory interest in a piece of residential real estate to be rented for vacation, event, corporate or other rentals.²³² Pacific's offices were in Scottsdale, Arizona, from at least March 30, 2017, to at least approximately March 30, 2018.²³³

4. Superior Diamond Management, LLC, was the manager of Pacific since at least March 30, 2017.²³⁴ Michael Barry Eckerman was the manager of Diamond since at least March 30, 2017, making him the de facto manager of Pacific.²³⁵

5. Premier Asset Management Group, LLC, is a company controlled by Mr. Eckerman and an affiliate of Pacific.²³⁶ Since December 12, 2016, Mr. Eckerman and PAMG have been subject to a temporary order to cease and desist from violating the Arizona Securities Act based on allegations that Mr. Eckerman and PAMG had committed securities fraud and registration violations of the Securities Act.²³⁷ An amended notice filed on March 8, 2017, added Ms. Sandoval as a respondent in that case and alleged that she also committed securities fraud and registration violations.²³⁸

6. Ms. Sandoval was Pacific's Chief Commercial Officer.²³⁹ Ms. Sandoval's job was to find investors for Pacific and she was compensated by Pacific on a commission only basis from capital raised in the Pacific offering.²⁴⁰

7. Pacific offered an investment in limited liability company membership interests ("Membership Interests").²⁴¹ The Membership Interests entitled investors to an annual return of 10%

²³¹ Amended Notice at ¶ 7; Amended Answer at ¶ 5.

²³² Amended Notice at ¶ 9; Amended Answer at ¶ 7.

²³³ *Id.*

²³⁴ Exh. S-1 at PCE01088.

²³⁵ *Id.*

²³⁶ Exh. S-1 at PCE01095, PCE01102.

²³⁷ *Premier Asset Management Group*, December 2016 Temporary Order at 4-5.

²³⁸ *Premier Asset Management Group*, March 2017 Amended Notice at 1, 6-7.

²³⁹ Exh. S-1 at PCE01102-PCE01103; Amended Notice at ¶ 13; Amended Answer at ¶ 11.

²⁴⁰ Tr. at 124; Exh. S-1 at PCE01101.

²⁴¹ Exh. S-1 at PCE01083.

1 with Pacific required to repay the investors' principal by March 30, 2022, by redeeming the
2 Membership Interests.²⁴²

3 8. Investors had almost no control over Pacific. The March 30, 2017 PPM noted, "The
4 LLC Agreement contains certain restrictions on the rights of members, including, but not limited to,
5 vesting nearly all management control in the Manager ..." ²⁴³ The March 2017 PPM also stated, "The
6 Manager, by and through its officers and members, exercises virtually total control over all aspects of
7 the Company's business operations and procedures, except for a small number of actions requiring the
8 assent of members owning in the aggregate seventy-five percent (75%) of all membership interests of
9 the Company entitled to vote ..." ²⁴⁴ Investors needed such a 75% supermajority of membership
10 interests to remove Pacific's manager.²⁴⁵ In addition, investors could only remove Pacific's manager
11 for cause, which was defined to require that, "the Manager has been dishonest, grossly negligent,
12 incompetent, or has shown moral turpitude or any failure to perform duties hereunder or otherwise
13 comply with and observe the covenants and agreements made by the Manager or Officer herein or
14 under their employment agreements."²⁴⁶ Investors Richard Brennan and Robert Ouellette confirmed
15 that they had no control over Pacific's business.²⁴⁷

16 9. Ms. Sandoval sold Pacific Membership Interests to six investors by describing Pacific's
17 business to them to persuade them to invest, namely Richard Brennan, Donna Hansen, Robert
18 Ouellette, Avis Rupp, Clarence Washington, and Harriet Washington. Ms. Sandoval met with Mr.
19 Brennan when she was looking for new customers and she told him that Pacific had several high-end
20 residences that it rented out to people attending events such as golf tournaments.²⁴⁸ Mr. Brennan's
21 impression from meeting with Ms. Sandoval was that Pacific owned these high-end residences.²⁴⁹ Ms.
22 Sandoval solicited Donna Hansen to invest and told her that Pacific owned, and successfully rented
23 out, large homes in Paradise Valley for which Ms. Hansen's funds would be used to pay expenses.²⁵⁰

24 ²⁴² Exh. S-1 at PCE01089.

25 ²⁴³ Exh. S-1 at PCE01096.

26 ²⁴⁴ *Id.*

27 ²⁴⁵ Exh. S-4 at PCE1602, PCE1610.

28 ²⁴⁶ Exh. S-4 at PCE1610.

²⁴⁷ Tr. at 58, 112.

²⁴⁸ Tr. at 52-54.

²⁴⁹ Tr. at 54-56.

²⁵⁰ Tr. at 47-49.

Ms. Sandoval told Mr. Ouellette that Pacific owned properties that it rented for a profit, how and when he could invest, and that Pacific would use his investment to buy more real estate.²⁵¹ Ms. Sandoval told Ms. Rupp that Pacific owned one property in Scottsdale that it rented out as a vacation home and that Pacific would use Ms. Rupp's investment to pay for expenses related to that property.²⁵² Ms. Sandoval told Clarence and Harriet Washington that Pacific owned properties in Arizona, including properties in Scottsdale and Chandler, and that Pacific's business model was to rent out some of the properties then eventually sell the properties for a profit.²⁵³ Ms. Sandoval also told the Washingtons that Pacific would use their investments to buy additional properties and that Pacific could pay them a higher return than their individual retirement account investments.²⁵⁴

10. Ms. Sandoval met the six investors in their Arizona homes.²⁵⁵ Donna Hansen, Avis Rupp, Clarence Washington, and Harriet Washington first learned about Pacific from Ms. Sandoval.²⁵⁶

11. The six investors invested a total of \$548,106 and received documented returns of \$22,437.65, leaving a total principal amount of approximately \$525,668.35 that is still owed to the investors.²⁵⁷

12. Ms. Hansen and Mr. Ouellette were not told anything negative about Mr. Eckerman or Pacific before they invested.²⁵⁸ Pacific's PPMs disclosed that Mr. Eckerman and PAMG were subject to a temporary order to cease and desist from violating the Securities Act and that they and Ms. Sandoval were alleged to have committed securities fraud and registration violations.²⁵⁹ However, Ms. Hansen did not receive a Pacific PPM until approximately 30 days after she had invested, and Mr. Ouellette did not receive a Pacific PPM until several months after his first investment on September 14, 2017.²⁶⁰

²⁵¹ Tr. at 93-95.

²⁵² Tr. at 45-46.

²⁵³ Tr. at 67-69.

²⁵⁴ Tr. at 67-68.

²⁵⁵ Tr. at 45, 49, 53, 63, 66, 99.

²⁵⁶ Tr. at 45, 47, 66.

²⁵⁷ Exh. S-50. Mr. Brennen and Mr. Ouellette testified that they received payments after March 2018, which would not have been reflected in the payments summarized by Exhibit S-50. Tr. at 59, 127-128. The record does not establish the amounts of these payments or whether any other investors received payments after March 2018. The Division shall credit the restitution order for any verified payments made by the Respondents that are not reflected in Exhibit S-50.

²⁵⁸ Tr. at 49, 106.

²⁵⁹ Exhs. S-1 at PCE01102-PCE01103, S-2 at PCE1586-PCE1587.

²⁶⁰ Tr. at 49-50, 99, 104-105, 119, 131-134, 135.

13. These findings of fact are based upon the Discussion above, and those findings are also incorporated herein.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona Constitution and A.R.S. § 44-1801, *et. seq.*

2. The findings contained in the Discussion above are incorporated herein.

3. Within or from Arizona, Respondent Venessa R. Sandoval offered and sold securities, within the meaning of A.R.S. § 44-1801.

4. Respondent Venessa R. Sandoval failed to meet her burden of proof pursuant to A.R.S. § 44-2033 to establish that the securities offered and sold herein were exempt from regulation under the Securities Act.

5. Respondent Venessa R. Sandoval committed fraud in the offer and sale of securities, in violation of A.R.S. § 44-1991, in the manner set forth hereinabove.

6. Respondent Venessa R. Sandoval's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

7. Respondent Venessa R. Sandoval's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032 and A.A.C. R14-4-308 as a community obligation.

8. Respondent Venessa R. Sandoval's conduct is grounds to order administrative penalties pursuant to A.R.S. § 44-2036 as a community obligation.

ORDER

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondent Venessa R. Sandoval shall cease and desist from her actions, as described above, in violation of A.R.S. § 44-1991.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondent Venessa R. Sandoval, as her sole and separate obligation, and Respondents Venessa R. Sandoval and Ashley Abbema, as a community obligation, shall make restitution in the principal amount of \$525,668.35 as a result of the conduct set forth in the Findings of Fact and Conclusions of Law, payable to the Arizona Corporation Commission within 90 days of the

1 effective date of this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308 subject
2 to legal setoffs by the Respondents and confirmed by the Director of Securities.

3 IT IS FURTHER ORDERED that all ordered restitution payments shall be deposited into an
4 interest-bearing account(s), if appropriate, until distributions are made.

5 IT IS FURTHER ORDERED that the ordered restitution shall bear interest at the rate of the
6 lesser of 10 percent *per annum*, or at a rate *per annum* that is equal to one percent plus the prime rate
7 as published by the Board of Governors of the Federal Reserve System of Statistical Release H.15, or
8 any publication that may supersede it on the date that the judgment is entered.

9 IT IS FURTHER ORDERED that the Commission shall disburse the restitution funds on a *pro*
10 *rata* basis to the investors shown on the records of the Commission. Any restitution funds that the
11 Commission cannot disburse to an investor because the investor is deceased or an entity which invested
12 is dissolved, shall be disbursed on a *pro rata* basis to the remaining investors shown on the records of
13 the Commission. Any remaining funds that the Commission determines it is unable to or cannot
14 feasibly disburse shall be transferred to the general fund of the State of Arizona.

15 IT IS FURTHER ORDERED that Respondent Venessa R. Sandoval, as her sole and separate
16 obligation, and Respondents Venessa R. Sandoval and Ashley Abbema, as a community obligation,
17 shall pay to the State of Arizona administrative penalties in the amount of \$25,000 as a result of the
18 conduct set forth in the Findings of Fact and Conclusions of Law. Said administrative penalties shall
19 be payable by either cashier's check or money order payable to "the State of Arizona" and presented
20 to the Arizona Corporation Commission for deposit in the general fund for the State of Arizona.

21 IT IS FURTHER ORDERED that the payment obligations for these administrative penalties
22 shall be subordinate to the restitution obligations ordered herein and shall become immediately due and
23 payable only after restitution payments have been paid in full or upon Respondents' default with respect
24 to Respondents' restitution obligations.

25 IT IS FURTHER ORDERED that if Respondents fail to pay the administrative penalties
26 ordered hereinabove, any outstanding balance plus interest, at the rate of the lesser of ten percent *per*
27 *annum* or at a rate *per annum* that is equal to one percent plus the prime rate as published by the Board
28 of Governors of the Federal Reserve System in Statistical Release H.15 or any publication that may

1 supersede it on the date that the judgment is entered, may be deemed in default and shall be immediately
2 due and payable, without further notice.

3 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, any
4 outstanding balance shall be in default and shall be immediately due and payable without notice or
5 demand. The acceptance of any partial or late payment by the Commission is not a waiver of default
6 by the Commission.

7 IT IS FURTHER ORDERED that default shall render Respondents liable to the Commission
8 for its cost of collection and interest at the maximum legal rate.

9 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, the
10 Commission may bring further legal proceedings against the Respondent(s) including application to
11 the Superior Court for an order of contempt.

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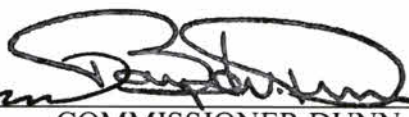
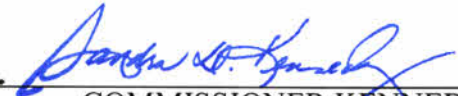

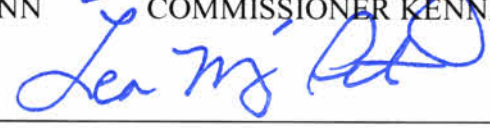
27 ...

28 ...

IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application the Commission may grant a rehearing of this Order. The application must be received by the Commission at its offices within twenty (20) calendar days after entry of this Order. Unless otherwise ordered, filing an application for rehearing does not stay this Order. If the Commission does not grant a rehearing within twenty (20) calendar days after filing the application, the application is considered to be denied. No additional notice will be given of such denial.


IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

		
CHAIRMAN BURNS	COMMISSIONER DUNN	COMMISSIONER KENNEDY
		
COMMISSIONER OLSON	COMMISSIONER MARQUEZ PETERSON	



IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 17 day of December 2019.


 MATTHEW J. NEUBERT
 EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
 MP/gb

1 SERVICE LIST FOR:

PACIFIC CAPITAL ENTERPRISES LLC, SUPERIOR
DIAMOND MANAGEMENT LLC, MICHAEL
BARRY ECKERMAN and TONYA ECKERMAN,
VENESSA R. SANDOVAL and ASHLEY ABBEMA

3 DOCKET NO.:

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8 and Tonya Eckerman, and Venessa R. Sandoval and Ashley Abbema

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14 Mark Dinell, Director

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